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The High Representative of the Union

The constrained agent of Europe's foreign policy

Niklas Helwig

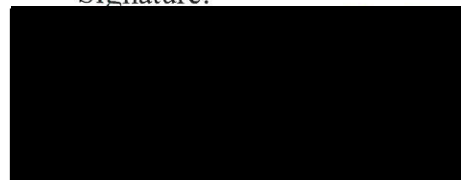
Declaration

I hereby declare that this thesis is my original work and it has been written by me in its entirety. I acknowledged all the sources of information, which have been used in the thesis. The thesis has not been submitted for any other degree or professional qualification except as specified.

Date, place:

14/10/2014, Helsinki

Signature:



Für Oma

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Abstract

This study argues that the High Representative of the Union for Foreign Affairs and Security Policy is a constrained agent of Europe's foreign policy. The 2009 Lisbon Treaty reform created the remodelled version of the High Representative of the Union as a potentially powerful agent to represent and coordinate Europe's foreign policy. However, the analysis shows how and why the member states granted only limited discretion to the new foreign policy actor during the first years of the post's existence. The aim of the study is to reveal the conditions of discretion of the High Representative. With the use of a principal-agent (PA) approach, the study shows that conflicting preferences of the member states, tight control mechanisms, as well as inadequate cooperation with the European Commission limited the High Representative's room for manoeuvre. The findings suggest that the PA approach can be developed further in the future in order to better explain limited discretion of agents in matters of foreign policy. Based on the findings, the study also puts forward a number of characteristics of a 'constrained agent'. It is suggested that the post of High Representative has the potential to emancipate from its status of a constrained agent over time, and to gain credibility as a foreign policy actor.

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List of abbreviations

ACP	African, Caribbean and Pacific Group of States
ALDE	Alliance of Liberals and Democrats for Europe (European Parliament)
BEPA	Bureau of European Policy Advisors (Commission)
BRICS	Brazil, Russia, India, China, South Africa
CFSP	Common Foreign and Security Policy
CMPD	Crisis Management and Planning Directorate
Coreper	Comité des Représentants Permanents (Committee of Permanent Representatives)
COREU	Correspondance Européenne
CPCC	Civilian Planning and Conduct Capability
CSDP	Common Security and Defence Policy
DCI	Development Cooperation Instrument
DG	Directorate-General
DG DEVCO	Directorate-General for Development and Cooperation – EuropeAid (Commission)
DG E	Directorate-General for External and Political- Military Affairs (Council Secretariat)
DG ECHO	Directorate-General for Humanitarian Aid and Civil Protection (Commission)
DG Relex	Directorate-General for External Relations (Commission)
E3+3	Germany, France, United Kingdom, United States, Russia, China
EC	European Communities
ECJ	European Court of Justice
EDF	European Development Fund
EEAS	European External Action Service
EGS	European Global Strategy
EP	European Parliament
EPC	European Political Cooperation
EPP	European People’s Party (European Parliament)
ESDP	European Security and Defence Policy

ESS.....	European Security Strategy
EU	European Union
EUMS.....	European Union Military Staff
EUSR	European Union Special Representative
HR/VP.....	High Representative/Vice-President
IGC.....	Intergovernmental Conference
INTCEN.....	Intelligence Analysis Centre
IR	International Relations
MEP	Member of the European Parliament
MS.....	Member States
NATO.....	North Atlantic Treaty Organization
NTC.....	National Transitional Council
PA	Principal-agent
Policy Unit.....	Policy Planning and Early Warning Unit
PSC	Political and Security Committee
QCA	Qualitative Content Analysis
QMV	Qualified Majority Voting
S&D	Socialists and Democrats (European Parliament)
TEC.....	Treaty establishing the European Community
TEU.....	Treaty on European Union
TFEU.....	Treaty on the Functioning of the European Union
UN.....	United Nations
UNSC	United Nations Security Council
WEU.....	Western European Union
WG.....	Working Group
WTO.....	World Trade Organization

1. Introduction

"It is like a novel translated into a film. When the key actor does not look like you thought, then you don't like the film."

Catherine Ashton, High Representative of the Union 2009-2014¹

If European Union (EU) foreign policy since 2009 were to be made into a film, then Catherine Ashton, the first High Representative of the Union for Foreign Affairs and Security Policy,² would have a starring role. She would star in a drama with ups and downs. In December 2009, the start of EU foreign policy under new Lisbon Treaty rules was highly subdued. When the European Council nominated Ashton to Lisbon's new-model High Representative post, close observers of the EU foreign policy project did not hide their disappointment. Many saw the choice of a low-profile and inexperienced candidate as a sign of the "self-dwarfing of Europe" (Ansgar, 2009). The new post created high expectations, as the incumbent would *inter alia* represent the Common Foreign and Security Policy (CFSP), sit in the European Commission as its Vice-President, chair the Foreign Affairs Council and head the newly established European External Action Service (EEAS). Many had hoped that the first office-holder would have a track record and experience in foreign policy making, thus being able to shape and develop the profile of the new position. Instead, Ashton's CV was characterised by low-profile work in national politics and a short stint as EU Trade Commissioner – nevertheless, a career in which she was, overall, very successful. During the first rough years, it seemed like the sceptics had been proven right. The new High Representative stumbled through her baptism of fire. Haiti, Egypt, Libya, Syria; wherever a manmade or natural crisis occurred, Ashton and her service seemed to be slow, weak and cumbersome.

Fast forward. Protesters chanted "Europe! Europe!" while Catherine Ashton walked amongst pro-European campaigners on "Euro-Maidan" (a renamed main square) in

¹ Quote of Catherine Ashton in answer to a question about the reasons for criticism surrounding the performance of the High Representative (Ashton, 2014).

² Subsequently referred to as 'High Representative of the Union' or 'High Representative'.

Kiev, Ukraine in December 2013. The large-scale protests, in the dead of winter, railed against the Ukrainian government's decision to shelve an association and trade agreement with the EU. Ashton was welcomed as a representative of the Union that they want to get closer to; however, she did not just visit the protesters on the main square in Kiev – but talked to the President and opposition leaders as well. Even though the EU had little leverage on developments in the Ukraine crisis, Ashton was recognised as the top representative of the 28 EU member states. Yet, at the high point of the crisis in February 2014, when Ukraine was at the brink of falling into a civil war, the foreign ministers of Germany, France and Poland mediated between the conflicting parties in Kiev. It seemed that in times of 'hardball' diplomacy, the responsibility fell where the power resided.

Nevertheless, 2013 had seen Catherine Ashton achieve other successes. In spring, she secured a deal between Serbia and Kosovo that further promoted stability in the Western Balkans. Just a month earlier she had managed to score a first success in the negotiations on Iran's nuclear programme, which she headed in the name of the EU3+3³ group of states. Even the press started to write positively about her, and portrayed her development from "Lady who?" to "EU's diplomatic secret weapon" (Perkins, 2013). It seemed as if her work and the institutional innovations of the Lisbon Treaty were finally being acknowledged, and that the initial disappointment had faded. But did the new post of High Representative allow its holder the discretion to have an impact on EU foreign policy?

This study does not focus on the personal characteristics of the incumbent Catherine Ashton, but rather on the post that she (currently, as of June 2014) holds. Thus, the character traits or leadership style of the office-holder, and their effects on the organisation of EU foreign policy and its content, are not considered. Instead, the study takes one step back and considers whether the post actually gives its holder the agency to make choices that change the course of events in EU foreign policy. This means that the focus of the analysis is on the High Representative as an institution.

³ A job that she inherited from the previous High Representative for CFSP, Javier Solana. Ashton currently heads the negotiations with Iran on behalf of, and together with, the 'big three' EU member states (Germany, France and Britain), as well as the three other permanent United Nations Security Council (UNSC) members (the United States (US), China and Russia) – hence, E3+3 (also called P5+1).

The High Representative is the agent of Europe's foreign policy, and the thesis analyses the discretion of the role in relation to how it is conditioned by institutional factors and distribution of preferences. Is the failure or success of the incumbent determined by their own choices, or is the High Representative merely a puppet of the member states?

1.1. The study in a nutshell

The study's main finding may be stated simply: the High Representative is the 'constrained agent' of Europe's foreign policy. The findings of the study suggest that the institutional innovations of the Lisbon Treaty had little positive effect on the discretion of EU foreign policy agents. Instead, the High Representative has become caught in an agency trap. The post of High Representative was designed by the member states in order to improve the efficiency of Europe's foreign policy; however, to date the High Representative has received either no mandate for particular actions or, in other cases, only limited discretion over the conduct of activities. The root cause of this is that the optional and intergovernmental nature of EU foreign policy was not changed by the Lisbon Treaty reform, while the prompt creation of new institutions temporarily interrupted the link between the member states' administrations and the new foreign policy chief's office. As a result, supranational agency even decreased, as the High Representative struggled to consolidate the authority of the new position and to increase the institutionalisation of cooperation with the Commission.

The discussions leading up to the Lisbon Treaty were in many ways a continuation of the debates and decisions on the development of the EU's Common Foreign and Security Policy over the last decades. However, the member states tried this time to reorganise EU foreign policy to be more coherent, continuous and visible through institutional engineering. The new High Representative of the Union would – in addition to serving as a full Commissioner and heading the EEAS – chair the foreign ministers' meetings and have a formal right to table foreign policy initiatives. It remained to be seen as to whether institutional changes would translate into a more effective foreign policy, or if a coherent foreign policy would rather be hampered by the member states limiting the discretion of the new High Representative.

This study aims to answer the following research question: What conditions the discretion of the post of High Representative? The discretion of the High Representative – that is, the High Representative’s ability to achieve more than the lowest common denominator of the member state positions – is a major prerequisite of the post in order for it to provide added value. Without deliberately granted room for manoeuvre for the foreign policy chief, EU foreign policy cannot be more than the sum of the individual foreign policies of its member states. However, member states traditionally underline sovereignty concerns in matters of foreign policy, and thus strive to limit the discretion of agents beyond state level. The tension between the benefits of more discretion for EU foreign policy agents and concerns over sovereignty loss of the member states provides the context for this analysis.

In order to answer the research question, the study uses a principal-agent (PA) framework: member states are the collective principal that delegate tasks and control their agent, the High Representative. In this constellation, the discretion of the High Representative is possibly conditioned by four factors:

- 1) The preference distribution among the member states,
- 2) The control and oversight mechanisms of the member states,
- 3) Time pressure, and
- 4) The nature of interaction between the High Representative and the Commission.

The methodology for assessing the research question is based on expert interviews, qualitative content analysis (QCA) and process tracing. Expert interviews with 52 practitioners in Brussels and national capitals provided the necessary background information on which to assess the relations and dynamics between the principal and agent. QCA was useful in reorganising the data from different sources in a systematic way, and to single out important pieces of information. These process observations were then reorganised again, to establish a causal chain between the above-mentioned four independent factors and the level of discretion of the High Representative.

The results of these endeavours are presented in three empirical chapters that deal with the High Representative's discretion during the creation of the office, and the actions and review conducted from it. First, the creation of the office under the new Lisbon rules possibly allowed the High Representative to gain discretion during the set-up of the supporting administration. Second, an analysis of the daily work of the foreign policy chief looks into the actions of the High Representative as agenda- and crisis manager, and as strategist and communicator of EU foreign policy. Third, the High Representative formally led the 2013 review of the EEAS as an integral part of the overall EU foreign policy architecture.

1.2. The puzzle: discretion of supranational foreign policy actors

The empirical puzzle: an unfinished EU foreign policy

The design of the High Representative post is a manifestation of the historic development of the EU's institutional structure of foreign policy making more generally. Part of the history of EU foreign policy has been a constant aggregation of new instruments, resources and structures at the EU level that has been convincingly dubbed the "Brusselisation" (Allen, 1998) or the "institutionalisation" (Smith, 2004) of EU foreign policy. A crucial part of this process was a tension between two objectives of the member states. On the one hand, the states needed to establish supranational agents at the EU level to make Europe's foreign policy more coherent and effective. On the other, they have an urge to control the discretion of the established agents on foreign policy choices in order to preserve the sovereignty of their foreign policies. The history of EU's foreign policy architecture can thus be seen as a struggle for and against supranational agency, which is carried out on horizontal (intergovernmental versus community method) and vertical (member state versus EU-level) axes (see Figure 1.1).

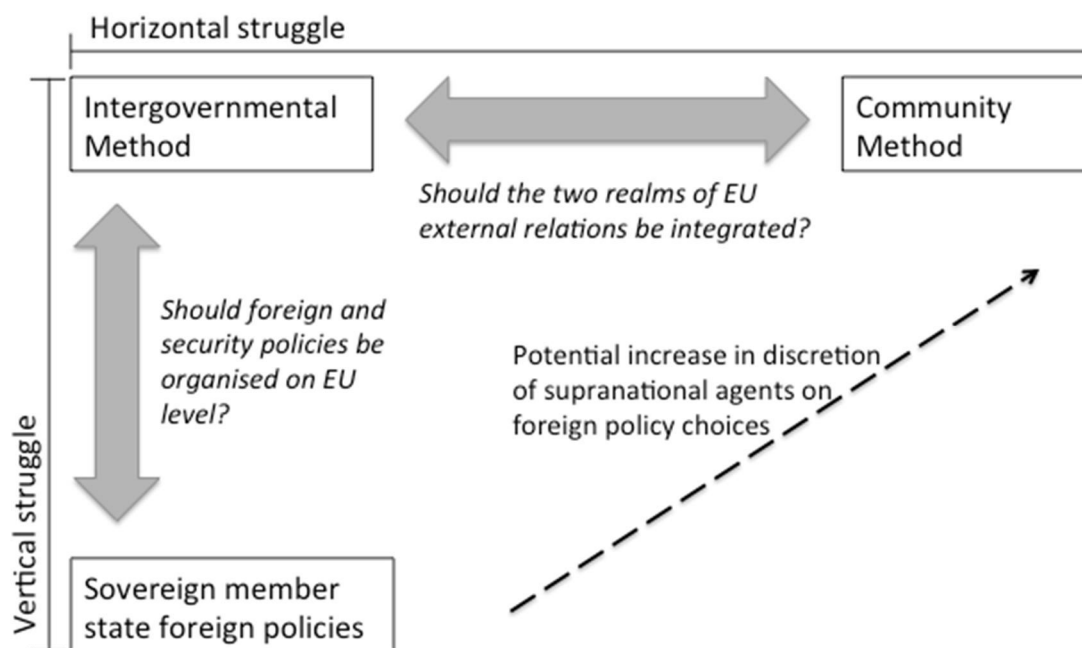


Figure 1.1: Agency struggles in EU external relations (author's own compilation)

The horizontal struggle of supranational agency is connected to the idea of reconciling the different realms of EU's external relations: commercial external relations, which were handled via the integrated 'community method', and political and security matters, which were characterised by intergovernmental procedures.⁴ Leaving aside the creation of the Western European Union (WEU) in 1948, as well as the failure of the initiative to establish a European Defence Community in 1954, the European integration project was for decades predominantly an economic enterprise with the European Communities (EC) at its heart. Member states complimented the economic external relations of the communities with intergovernmental arrangements to discuss and decide on political and security-

⁴ The 'community' and 'intergovernmental' methods represent ideal types of policy-making procedures in the EU that exist alongside various nuanced approaches. "The Community method of decision-making is characterized by (i) the central role of the Commission in formulating proposals; (ii) qualified majority voting (QMV) in the Council as a rule; (iii) involvement of the European Parliament with varying intensity depending on the decision-making procedure; and (iv) the role of the Court in ensuring judicial accountability" (De Baere, 2008: 73). In contrast, the intergovernmental method implies "the active involvement of the European Council in setting the overall direction of policy; the predominance of the Council of Ministers in consolidating cooperation; the limited/marginal role of the Commission [...]; the basic exclusion of the EP [European Parliament] (bar budget) and the ECJ [European Court of Justice] from the circle of involvement in policy formulation, execution and control; [and] the adoption of special arrangements for managing cooperation [...]" (Missiroli, 2011: 4).

related matters of foreign policy. This process started first with the failed Fouchet Plan of the 1960s, and was taken up with the establishment of the European Political Cooperation (EPC) in the 1970s, which became the CFSP with the 1992 Maastricht Treaty. However, since day one, the idea that the two separate administration and decision-making arrangements could be “knit together [...] in a coherent and effective whole” (Heath, 1964: 42) was on the table.

Over the years, steps were taken to bring the different elements of Europe’s foreign policy closer together. Awareness grew that in order to ensure an effective international presence, the foreign policy endeavours of the member states had to match the EC’s growing influence in the world as a marketplace and agricultural player (Bretherton and Vogler, 2006: 27ff). As a consequence, the Single European Act of 1986 brought the EC and the EPC under the same legal umbrella and pronounced that they “must be consistent”.⁵ The Maastricht Treaty established the EU, put the CFSP and EC under a common roof, and gave the Commission a (non-exclusive) right of initiative within CFSP. However, CFSP remained a separate and intergovernmental pillar.

The Maastricht Treaty nonetheless boosted the development of foreign policy capabilities in the Commission in the 1990s and 2000s. The Commission created an external service of more than 120 delegations around the world to represent the powerful economic policies of the Commission, especially development and trade, and also created an administrative capacity to deal with CFSP matters (Lieb, 2013; Nugent, 1997; Smith, 2004; Spence, 2006). The Commission became a heavyweight in Europe’s external relations. Reconciling the Commission’s weight in the world with the political goals of the CFSP was a tempting endeavour; however, it was never realised, as the member states were hesitant to grant political powers to the Commission, since they did not want to see their foreign policy choices affected by a supranational institution.⁶

⁵ Title III Art. 30 (5), The Single European Act, Luxembourg, 17 February 1986 (Hill and Smith, 2000: 139ff).

⁶ Supranational institutions are defined as “institutions that are organisationally and politically independent from the founding states” (Tallberg, 2002: 23).

Instead, the member states built up a considerable foreign policy administration outside of the European Commission. This endeavour symbolised the vertical struggle of member states for and against supranational agency. The logic of a step-by-step increase of administrative resources for political cooperation at the EU level worked best outside of the community framework, though the member states were still careful not to lose control over their foreign policies and not to grant discretion over foreign policy matters to supranational agents. The suggestions of the Fouchet Plan, to set up a European Political Commission in Paris staffed with seconded senior national diplomats to support the work of the Council, was rejected.⁷ The 1981 London report on the EPC introduced support structures in the form of seconded diplomats to back the work of the rotating Presidency. However, the member states were careful not to grant powers to a supranational agent, and added that additional foreign policy officials would “remain in the employment of their national Foreign Ministries, and [...] be on the staff of their Embassy in the Presidency capital”.⁸ A permanent EPC Secretariat was eventually introduced with the SEA. Though the Secretariat was housed on the thirteenth floor of the Council Secretariat building, strong efforts were put in place to make the EPC Secretariat as distinct as possible from its EC counterpart. The office, which only comprised 17 seconded national civil servants (including support staff), had few possibilities to develop an independent agenda. It had no budget of its own and worked under the authority of the rotating Presidency (da Costa Pereira, 1988). Only later, after the establishment of the CFSP via Maastricht, and especially after the nomination of Javier Solana as the High Representative for CFSP, did foreign policy structures grow exponentially. Solana, as former Spanish foreign minister and North Atlantic Treaty Organization (NATO) Secretary-General, was a political heavyweight and pioneered the development of the EU’s foreign policy with the help of his experience and personal network (Müller-Brandeck-Bocquet and Rüger, 2011). By the mid-2000s, a complex foreign policy structure with more than 500 staff-members had developed in the Council Secretariat (Juncos and Pomorska, 2010). Member states’ feeling of ‘ownership’ of the

⁷ See Art. 9 and 10 in the Draft Treaty for the Establishment of a European Political Union (Fouchet Plan I), 2 November 1961 (Hill and Smith, 2000: 50).

⁸ Art. 10, Report Issued by the Foreign Ministers of the Ten on European Political Co-operation (The London Report), London, 13 October 1981 (Hill and Smith, 2000: 114ff).

Secretariat spurred this expansion; nevertheless, the member states deliberately granted actors in Brussels limited room for discretion over foreign policy formulation beyond the state-level, as they created the post of High Representative and capacities for EU-level policy analysis.

The European Convention of 2002/2003 tried a new approach and turned the institutionalisation process upside down. Until then, each treaty revision had codified previously informal practices. However, the European Convention organised and simplified the complex, ad hoc structures that had evolved over the previous decades. At the heart of the reform, which eventually came into force in 2009 with the Lisbon Treaty, was the double-hatted High Representative. Due to the vast task description, comprising inter alia the job of a Commissioner as well as that of chair of the Foreign Affairs Council, the idea of the new office was contested from the start. However, the revamped EU foreign policy chief, supported by the EEAS, was supposed to bring all of the loose ends of Europe's foreign policy together. The member states thus took another step in bringing Community-based external relations and security matters closer together. Still, the writers of the treaty stipulated that the CFSP remained "subject to specific rules and procedures",⁹ and made sure that the post of High Representative was legally separate from the post of Vice-President of the Commission, even if occupied by the same person.

To sum up, the Lisbon Treaty was a new step in both reconciling the separate spheres of EU foreign policy-making, and creating further supranational capacities to deal with the CFSP. But what was the effect of this new development? The question of the discretion of supranational agents on matters of EU foreign policy remained unanswered and worth exploring.

The theoretical puzzle: institutions and supranational agency

The institutional development of the EU foreign policy architecture, but also of the Union's architecture as a whole, has always been part and parcel of the work of EU scholars. The three new institutionalisms – historical, rational choice and sociological institutionalism (Aspinwall and Schneider, 2001; Hall and Taylor, 1996)

⁹ Art. 24(1) TEU.

– in particular focused on the interplay between institutions and policy outcomes. The creation of the High Representative and the institutional engineering of the European Convention were based on the intention to make the management of EU foreign policy “fit for purpose” (Crowe, 2008: 27). But do (foreign policy) institutions matter? How do theorists of EU integration and International Relations (IR) evaluate the likelihood of supranational agency beyond the state?

The well-known, traditional debate in the field of EU integration theory is carried out between advocates of neo-functionalism and intergovernmentalism. Neo-functionalist scholars highlight the prominent role of supranational institutions, which obtain enhanced functions and discretion via a process of ‘spill-over’ (Haas, 1958; Lindberg, 1963). From this perspective, EU member states delegate executive or administrative functions to EU-level institutions as a result of functional pressures. The shift of policy issues towards the institutions in Brussels also implies a shift in the focus of national elites (Tranholm-Mikkelsen, 1991). In the end, delegation and socialisation processes contribute towards a situation in which supranational institutions enjoy substantial autonomy from national administrations, and can be regarded as actors in their own right (Sandholtz and Stone Sweet, 1998). The continuation of this argument is that supranational actors exert significant influence on inter-state bargaining, for example with the European Commission acting as the ‘engine’ of European integration (Pollack, 2003). Any spill-over implying a transfer of legal competences to the EU level did not take place in matters of EU foreign policy (Wessels, 2004). However, it has been shown that socialisation processes among Brussels elites are present. A series of studies by Juncos and Pomorska (2006, 2010, 2013) revealed that officials in the Council working groups and Secretariat, as well as the new EEAS, developed distinct codes of conduct, role conceptions and attitudes, which, to some extent, made them more closely attached to a European foreign policy than to their national one. Nevertheless, it has yet to be shown how far a distinct socialisation of foreign policy actors at the EU level translates into a significant supranational influence on foreign policy decisions.

Liberal intergovernmentalism refuted ideas of spill-over effects leading to discretion or influence of supranational actors with respect to government decisions. Moravcsik

(1993) strongly opposed any perspective on the European integration process that advanced a high degree of supranational entrepreneurship, suggesting that leadership by supranational actors would be neither necessary, nor effective. As a consequence “[t]he role of legendary figures such as Monnet and Delors has been much exaggerated” (Moravcsik, 1999: 270). While supranational actors play a passive role as facilitators that bring down the transaction costs of international negotiations, they have little influence on the shape of the final decision. Member states’ governments, constrained by domestic preferences, rather than supranational institutions, are decisive for the outcome of international negotiations. A move towards further integration in the field of foreign policy with discretion for supranational agents is unlikely, as governments only seek integration in policy areas in which supranational strategies increase their power vis-à-vis domestic interest groups. However, this process is limited to matters of economic policy (Andreatta, 2011: 33f).

These grand theories of integration, which, unsurprisingly, have most explanatory power when applied to policy fields that are subject to the integrated community method, reach their limits when trying to explain integration endeavours in the field of foreign policy (Helwig and Stroß, 2012). It is thus fruitful to consult IR literature that places the relationship between structure and agency in the wider context of dynamics in international systems. Predictably, classical realist models, which emphasised the economic and military power of states (Carr, 1964), as well as structural realist’s accounts (Waltz, 1979), assigned little or no discretion to supranational institutions, and focused on power relations among states. Since then, however, the history and IR literatures have come a long way, and more recent concepts of power in international relations acknowledge the establishment and effects of international institutions. For example, Barnett and Duval (2005) categorise different ways in which international norms and institutions codify, structure, and impose power relations among states. Institutional rules in the international system are difficult to alter, and might establish power relations that privilege certain states and disadvantage others. Discursive activities carried out in the international sphere manifest new norms and interpretations that structure future actions. Within this more structured world, supranational agents can suddenly be analysed as independent entities as well, as their source of influence is further

detached from traditional state power. Soft power resources (Nye, 2008) can become a source of influence (and hence discretion) and might be based on the attractiveness (Weber, 1987) of supranational agents. However, these concepts still see international institutions as a passive means for nation states to exercise power, rather than as discretionary agents with an independent self-concept and agenda.

Theory	Logic	Supranational agency
Neo-functionalism	'Spill-over' effects and loyalty shifts to supranational level	Supranational actors enjoy autonomy from national administrations, and exert influence on interstate bargaining
Liberal intergovernmentalism	Domestic preference aggregation and interstate bargaining	Supranational institutions lower transaction costs but have no influence on decision-making outcome
(Neo-)realism	Balancing of traditional state power	Institutions mirror power balances
Power in IR approaches	Institutions as mediators in international power relations	Supranational institutions influence actors choices through their existence
Role Theory	Role conceptions direct information selection and assessment	Role conceptions of supranational foreign policy elites influence collective actions
Principal-Agent approach	Principals delegate tasks to agents and control their implementation	Supranational agency varies given the level of discretion granted by the member states

Table 1.1: Theoretical approaches and supranational agency

Foreign policy analysis, and in particular role theory, provide a framework in which the agency of supranational actors is perceived as more likely, compared to traditional approaches. Holsti (1970) articulated that nation states' foreign policy decisions are not merely based on systemic and material factors, but on role conceptions of foreign policy elites, which derive from sociological, historical and cultural characteristics. Role theory thus underlines 'agency' in the agent-structure debate, and recognises that foreign policy is made by policy-makers who act in response to specific needs and demands in the domestic and international environment (Breuning, 2011). Even though EU foreign policy is not based on a

national identity of a European state, its foreign policy elite also acts according to institutional and international role expectations, as well as according to their own role conceptions (Aggestam, 2006). The result is a framework for analysis, in which EU foreign policy institutions matter and have an independent effect on Europe's external relations. The role performances of different EU Council Presidencies have received particular scholarly attention (Elgström, 2003; Schout and Vanhoonacker, 2006). While these studies have illuminated different characteristics of supranational agents, they do not aim to explain the conditions under which more or less discretion for supranational actors is likely to occur.

While role theory identifies sociological factors as a source of supranational discretion, the PA approach places the relations of national principals and supranational agents in a rational choice framework. The PA approach identifies *inter alia* the preference distribution, as well as control and oversight mechanisms of principals as independent variables that condition the agent's room for manoeuvre, and provide a basis on which to develop testable hypotheses (Kassim and Menon, 2003; Pollack, 1997). Two characteristics of the approach make it valuable as the main framework for this study. First, unlike grand theories of European integration, it does not try to generate a catch-all explanation for a social phenomenon, but rather represents a toolkit to analyse a variety of PA relationships. The use of a middle range theory allows us to put the specific empirical observation in focus, and analyse it in a scientific manner (Boudon, 1991; Dür and Elsig, 2011). Second, the PA approach is suitable for filtering out the effect of institutional factors on supranational agency. In particular, it can be used to juxtapose the effects of institutional mechanisms of the post of High Representative with the effects of disagreement among member states. Hence, the PA framework helps us to understand the possible impact of the Lisbon Treaty reform on EU foreign policy making, and allows us to answer the question: What conditions the discretion of the post of High Representative?

1.3. Design, argumentation, findings and limitations of the study

Theory

The study uses the PA approach to identify the conditions that lead to enhanced discretion for the post of High Representative. In a first step, the PA approach has to be modelled to fit the complex reality of the EU foreign policy architecture. This is a challenging undertaking, as EU actors in general are accountable and connected to a number of different players (Dür and Elsig, 2011), and few extant studies apply the PA approach to EU foreign policy (Dijkstra, 2013; Klein, 2010). In addition, the construct of the High Representative/Vice-President (HR/VP) is complex in itself, and the incumbent is accountable to the member states, as well as, to some extent, to the Commission and the European Parliament (EP). In the developed model, the member states are the collective principal that delegates tasks to the High Representative of the Union, which represents the agent of the study. In order to obtain a clear-cut analysis, the Commission and the EP are not regarded as principals in the basic model.

The dependent variable of the study is the level of discretion of the post of High Representative. The level of discretion was ranked on an ordinal scale ranging from ‘limited discretion’, to ‘deliberate discretion’ to ‘unintended discretion’. While ‘deliberate discretion’ includes activities of the High Representative that are still within the intentionally granted room for manoeuvre, ‘unintended discretion’ encompasses autonomous action outside the control of the member states.

The independent variables of the study are the preference distribution of the member states, control and oversight mechanisms, time pressure, as well as the nature of the interaction between EU-level agents. The preference distribution across member states (the collective principal) can have a positive effect on the discretion of the High Representative, as member states might fail to agree on sanctioning unwanted behaviour on the part of the High Representative. However, disagreement among member states can also have a negative effect on the discretion of the High Representative: if member states disagree, a failure to aggregate their preferences might prevent them from delegating a task to the High Representative in the first

place. After the member states delegate a task to the High Representative, such as common representation or agenda-management, they set up certain control and oversight mechanisms, in order to ensure that the agent's activities are in line with their preferences. The level of discretion can be affected by detailed mandates, member state participation in the implementation of the task, or sanctioning of unwanted behaviour. Time pressure is another constraint on the collective principal, which might force the member states to write an unspecific mandate to the High Representative that widens room for discretion of the post. Last, but not least, the nature of agent interaction, in this case between the High Representative and the European Commission, might either enable or constrain the discretion of the High Representative on foreign policy choices. Competition between the two EU-level players reduces their collective room for discretion, while they can use cooperation to their advantage and plan decisions and actions that are more difficult for the member states to alter and sanction.

It is thus not immediately clear whether the institutional powers of the High Representative as the Presidency in CFSP matters, Vice-President of the Commission, and EU foreign policy chief give the incumbent any discretion over foreign policy matters. The inability of the member states to agree on mandates, as well as various possibilities to control the High Representative, might mean that the post serves purely as a figurehead.

Main argument

This study points to the need for a reconsideration of the expectations attached to the post of High Representative. In the constitutional treaty, the post was still dubbed "EU Minister for Foreign Affairs", but recent analyses refer to the High Representative as a "potential diplomatic entrepreneur" (Hemra et al., 2011: 2), "an autonomous player" (Vanhoonacker and Pomorska, 2013: 5) or (under specific circumstances) "a political protagonist in its own right" (Thomas and Tonra, 2011: 12). These descriptions assume a level of discretion of the High Representative, which the post – in its current institutional constellation – lacks. The institutional innovations of the Lisbon Treaty have not had the positive effect on the discretion of

EU foreign policy agency that was expected by many observers; instead, the High Representative should be considered as a ‘constrained agent’.

The High Representative is caught in an agency trap. On paper, the job description is powerful and offers the post holder possibilities to initiate, plan and implement EU foreign policy. Yet the powers come with a caveat. The High Representative’s actions rely on individual mandates from the member states, and are closely controlled. As EU foreign policy is currently characterised by unanimity rules and disunity among the member states on the future course of action, the High Representative has little discretion to carry out the job. If the High Representative acts outside of the predefined scope, these actions risk either being sanctioned, or leading to disengagement of the member states.

The Lisbon Treaty – in the short term – reduced the discretion of the High Representative compared to the discretion enjoyed previously by the rotating Presidency and the High Representative for CFSP. The treaty confronted the member states with a supranational agent with new institutional powers, such as chairing the Foreign Affairs Council, sitting in the Commission, and heading the EU diplomatic service. These powers detached the post from the intergovernmental sphere of policy making with which the member states felt comfortable. Therefore, the newly established position is equal to that of a ‘constrained agent’ in its current state of development. As a new player in intergovernmental EU foreign policy, the mandate of the High Representative is still contested. Furthermore, without a solid mandate that stipulates concrete action priorities, the post is in constant anticipation of *ex-post* sanctioning of unwanted behaviour. In addition, the current state of its institutional development still lacks the capacity to cooperate efficiently with the Commission as the major EU trade, aid and development player.

In the conclusion section of this study, the implications for future developments are discussed. Over time, there are two scenarios that might alter the status of the High Representative as a ‘constrained agent’. The first option is a modification of the present PA constellation in which the High Representative is subject to close control of all member states. This would be achieved via a further integration of the policy field, either through strengthening the EP as an EU-level principal, or through a

wider application of qualified majority voting (QMV). The second option is to halt further integration of EU foreign policy, and to strengthen the feeling of ownership of the post via close cooperation with national administrations. While this might sound counterintuitive from a PA perspective, closer networking of the High Representative with national foreign policy elites might increase the post's discretion over Europe's foreign policy, as it would create trust and lower the probability of control by, and sanctions from, the member states.

Findings

The main findings of the study can be summarised in three arguments about the historical development of EU foreign policy, the discretion of the High Representative in various activity areas, and the strengths and weaknesses of the PA approach.

First, the study places the post of High Representative in the context of the historical development of EU foreign policy. The discussions within the European Convention reflected a traditional debate between integrationist and intergovernmentalist member states. Functional goals, such as the quest for greater coherence, continuity and visibility of EU foreign policy, played a role in the creation of the post; nevertheless, the Convention was not free of politics. The sovereignty concerns of a group of member states led to a compromise, which is reflected in the double-hatted set-up of the post and the vast job description, which ensured operative integration without political integration of foreign policy. The negotiations on the set-up of the EEAS, and the review of the EU external action architecture, continued this institutional debate and revealed that the same front persisted between advocates of an integrated foreign policy and guardians of national foreign policy. The institutional development of EU foreign policy has resulted in deadlock and reform fatigue among the member states. This has forced them to look at more technical aspects of the further development of the institutional apparatus.

The second finding of the study is the collected empirical evidence that the High Representative had very limited discretion over the creation, actions and review of

the office. While a lot of research concentrates on the development of the EEAS,¹⁰ only few academic contributions take the post of High Representative as the starting point from which to analyse Europe's evolving foreign policy architecture.¹¹ Given the depth and quantity of evidence on which it relies, this study maybe one of the most wide-ranging accounts of the post of High Representative to date. The discretion of the High Representative was found to vary across the cases analysed, though most of the cases revealed only limited discretion. In the set-up of the EEAS, which was one of Catherine Ashton's priorities, she had unintended discretion. Time pressure in setting up the new service, close cooperation between the High Representative and the Commission, as well as the disunity of member states, led to a situation in which member states lost control over the creation of the new service. However, the actual performance of the post in the implementation of a number of tasks during the first years under the Lisbon Treaty revealed the shortcomings of the new set-up. Conflicting preferences among member states led to minimal delegation, and tasks that were eventually delegated to the High Representative were under close control by the member states. The agenda- and crisis-management, as well as the strategic development of EU foreign policy and its representation, were performed under member states' strict guidelines. Furthermore, coordination of the external relation portfolios of the Commission remained a challenge for the High Representative/Vice-President, rather than a source of discretion. The last empirical chapter of this study, which considers the review of the EU foreign policy architecture, illustrates the consolidation of the post of High Representative. On the one hand, it shows that no significant changes to the set-up are to be expected in the medium term. On the other hand, it foreshadows the possible future working relationship between the High Representative and the member states, the strength of which develops from being based on close working relationships with the member states.

¹⁰ The studies focus on issues such as officials' attitudes, security and development issues, delegations, consequences for the diplomatic system, and legal aspects (Blockmans, 2012b; Duke, 2011; Juncos and Pomorska, 2013; Lieb, 2013; Maurer and Raik, 2014; Smith, 2013).

¹¹ Some researchers have analysed the role of the High Representative in more detail, as part of the overall diplomatic and decision-making system (Dijkstra, 2011a; Edwards, 2011, 2013; Müller-Brandeck-Bocquet and Rüger, 2011; Vanhoonacker and Pomorska, 2013).

A third achievement of the study is to contribute to a wider application of the PA approach. Few studies of EU foreign policy have applied the PA approach, partly because of the intergovernmental nature of the policy field. The PA approach traditionally highlights the role of agents that can base their activities on a formal and uncontested mandate defined by a contractual relationship between the principals and the agent. Hence, the application of the approach is more straightforward in domestic politics, in which the relation of actors is codified within a constitutional arrangement (see, for example, Weingast and Moran, 1983). Furthermore, application of the approach to the role of the Commission in EU politics (see, most prominently, Pollack, 1997) was conceivable as the institutions can base its authority on the division of competences between the member states and the Union stipulated in the treaties. In general, research on supranational agents has been mainly in the field of regulatory and judiciary politics (see Majone, 2001), begging the question whether agents operating in highly political policy fields are subject to the same dynamics and logics. The post of High Representative fits uneasily into the PA framework, as it operates in a political and institutional environment that is more opaque, and in which no competences have been formally transferred to the European level.

The study thus aims to contribute to the debates within the PA research family. What are the means by which the principal can control the agent? Does the principal need to make costly investments into centralised control mechanisms in order to avoid agency slack, or is there a decentralised system of ‘fire alarms’ that indicates unwanted behaviour of the agent (McCubbins and Schwartz, 1984)? How do agents that work in the field of nation-state-driven international diplomacy fit into the agent-typology debated among PA scholars (see Pollack, 2007)? Does the High Representative fit into the same category of agents as the European Commission or the ECJ?

The study offers some preliminary answers to these questions. In particular, it is suggested that the High Representative can be defined as a ‘constrained agent’. Compared to well-established agents with an uncontested standing, a constrained agent relies more on close engagement with the principal in order to secure and

consolidate the legitimacy of its mandate. In general, PA scholars interpret a close, or even intertwined, relationship between the principal and the agent as a possibility for control and supervision over the agent's activity. Consequently, PA scholars see this as a limitation of the discretion of agents. The evidence collected here suggests a different interpretation. A close link between the High Representative's support structures, such as the cabinet and the EEAS, and the member states' administrations, might rather be a source of trust, support and mutual understanding, which increase the probability of discretion of the High Representative in the first place.

The sub-category of a 'constrained agent' differs from a classical agent definition. The principal challenges the agent's general authority as an actor, and has means of side-lining the agent's sphere of action. The constrained agent thus depends on a trust relationship to the principal in order to develop his authority. A subcategory of constrained agents is qualitatively different from the classical agents observed in domestic and regulatory PA analyses. While it is commonplace that principals contest the agents' actions and choices and want to restrict their room of manoeuvre, it is usually not the case that the principal contests the legitimacy of the agent all together. Yet, principals create the agent in the first place, thus anticipating benefits with its creation and risking unintended discretion. Introducing the subcategory of a constrained agent adds thus not only insights to PA literature, but it is also relevant as an approach to analyse interstate cooperation. In contrast to liberal intergovernmentalist and realist models it puts supranational agency in the centre of the analysis, both as an intended instrument of the member states and as a subject of their contestation. By defining the High Representative and other possible supranational actors as constrained agents, we can analyse their activities over time with the PA toolset, even if they work closely together with, and as representatives of, state principals.

Scope and limitations

Given the limited resources of a PhD study, compromises of a theoretical and empirical nature inevitably have to be made. For instance, the choice of the theoretical approach limited the analysis to certain factors and scientific worldviews: the PA approach is rooted in the scientific worldview of methodological

individualism, which is characterised by an individualist ontology and a positivist epistemology. This means that it focuses on the direct observation of actors' choices and behaviours, and assumes that these follow testable patterns. The choice of PA hence excludes other interesting questions that could have been asked. An approach embedded in social ontology would have discarded the rational perspective on actors taken in this study (Thomas and Tonra, 2011). Instead of looking at the preference and utility-maximisation of agents, the study would have analysed how the High Representative followed a "logic of appropriateness" (March and Olsen, 1984). In line with the role theory approach mentioned above, the question would have been how the incumbent shaped their role within the new post via interaction and social processes with other actors in Brussels, in national capitals, and outside Europe. Whereas the PA approach singles out the mechanisms that lead to more or less agency of the High Representative, it leaves us mostly in the dark with respect to a conception of how the internal and external role conception of the post are constructed. What role in the EU and in the world is appropriate for the High Representative? In short, the PA approach reveals the scope, but not the content of agency.

A consequence of focusing on institutions and preferences as the main variables of the study means that the personal characteristics of the office-holder play a very limited role in the analysis. Understandably, media coverage in recent years has focused on the character traits, as well as personal qualifications, of Catherine Ashton (Castle, 2011; Perkins, 2013). In addition, the officials interviewed for this study repeatedly referred to certain personal characteristics and compared the leadership styles of Catherine Ashton and Javier Solana, who some of the interviewees had worked for when he was High Representative for CFSP. For this study, these accounts were only taken into consideration insofar as they referred to a comparison of the institutional and political context that both of the incumbents worked within. It might be worthwhile to explore the effects of the post-holder's qualifications, role conception and leadership styles in future studies.

Moreover, the focus of the study is to explain and provide a better understanding of an institution, and not of a policy. Throughout the study, the reader will find

discussions of events and political decisions; however, it is not the aspiration of the study to explain the content of policy choices taken by the member states, the High Representative or other actors. Policy cases are analysed with a focus on learning something about the post of High Representative and the relations of the post to the member states under particular conditions. For example, the immediate response of the High Representative to the crisis in Libya is discussed not in order to explain EU's involvement, but to scrutinise the discretion of the post in this specific situation. The approach taken here is thus inward-looking and focused on the latest stage of the institutionalisation process of this policy field, and the internal dynamics between EU-level institutions and the member states.

The study covers the first years of the post of High Representative between December 2009 and December 2013. Unsurprisingly, it was beyond the resources of the study to provide a complete account of all EU foreign policy developments concerning the post of High Representative during this period. The methodology chapter (Chapter 3) of the study describes in more detail how six embedded cases were chosen to provide a comprehensive assessment of the post in accordance with the theoretical framework. Readers will miss accounts of important policy developments within this timeframe, such as the Iran nuclear talks, the Serbia-Kosovo deal, or crises in Egypt, Ukraine and other countries outside the EU, to mention a few. However, it is argued that the empirical evidence presented is enough to sustain a solid first answer to the research question posed in the study.

1.4. Structure of the thesis

Seven chapters follow this introduction. Chapter 2 presents the PA approach as the main theoretical framework of the study. It will first outline the basics of the PA approach, which is subsequently modelled to fit the complex reality of EU foreign policy-making. It explains in detail the dependent variable of 'level of discretion' and thus what this research seeks to discover. Based on the theoretical knowledge gathered, the effects and indicators of four independent variables – namely conflicting preferences, control and oversight mechanisms, time pressure and the nature of agent interaction – are outlined.

Chapter 3 discusses the methodology used for this study. In particular, it explains the steps that led to the findings gathered in this research and why they have the required level of robustness. These steps included the case design, data collection, QCA and process tracing.

Chapter 4 details the relevant historical background, and explains how the post of High Representative came to be created at the turn of the century. To that end, the main historical background of the institutional development of CFSP, the administration under the pre-Lisbon High Representative for CFSP, Javier Solana, and especially discussions in the Convention on the future of Europe are presented and analysed. The section shows how the post of High Representative was born out of a compromise between integrationists and intergovernmentalists, and represents a continuation of the step-by-step institutionalisation of the foreign policy field.

Chapters 5 to 7 contain the core, empirical analysis of the thesis. The negotiations undertaken during the set-up of the EEAS, which is the main supporting structure of the High Representative, are traced in Chapter 5. Chapter 6 goes into detail regarding the performance of the High Representative in different areas of the job, as an agenda- and crisis manager, in providing a strategic outlook for the Union, and in communicating the Union's foreign policies. The discussions around the review of the EEAS in 2013 are evaluated in Chapter 7.

Chapter 8 discusses the findings and returns to the puzzles and main arguments presented in the introduction. In particular, it focuses on the implications of the findings for the institutional future of EU foreign policy, and the theoretical development of the PA approach. It puts forward the concept of 'constrained agents' and discusses how this concept could be tested in future research.

2. National principals and supranational agents

“What a nation-state cannot provide alone – in economics, or defence – it can still provide through means far less drastic than hara-kiri”
(Hoffmann, 1966: 866)

Stanley Hoffman’s quote from his article discussing the “fate of the nation-state”, summarises the dilemma and possible solution of democracies in Europe. It is driven by the observation that member states in some policy areas are not able to efficiently ensure the wellbeing and interest-representation of their citizens as independent units in the interconnected globalised world. On the other hand, the *hara-kiri* by the nation state, in form of its absorption into a European super-state, is unlikely, especially in times of regional peace and prosperity. Other means by which to ensure the safety and interests of the state without giving up on sovereignty are possible, and have been explored in recent decades. One of these means is explored in detail here: a partial delegation and control of common tasks to supranational European agents.

Instead of placing the analysis in the context of the battle of the grand theories of European integration, a mid-range approach is chosen; that is, the principal-agent approach. In this way, the thesis follows a wider trend in EU research since the 1990s to use analytical frameworks common to general political sciences and less restricted to the single case of the EU (Saurugger, 2014: 9f). Dür and Elsig (2011: 331) even go as far as to state that “one of the major advantages of using a PA approach is that it does not come with a similarly extensive theoretical baggage as do the traditional macro-theories of European integration.” This argument remains valid insofar as the new approaches analyse *how* aspects of the EU political system work, rather than *why* regional integration occurs in the first place – thus limiting the analysis to distinct micro-phenomena. Nevertheless, as Saurugger (2014) argues, even middle range approaches should keep the overall picture of the European integration process, and its conditions and reasoning, in mind.

An analysis must thus acknowledge EU’s *sui generis* nature, which is no longer that of either federal state or a loose community of states. In the analysis of its external

relations in particular, researchers are confronted with a complex network of actors and a plethora of decision-making mechanisms and instruments that need to be considered (see, for example, Hill and Smith, 2011; Keukeleire and MacNaughtan, 2008). The effect of increased institutionalisation (or even integration) of EU foreign policy has not yet been fully explored. The PA approach presents its own interpretation of the causes and effects of institutions and actors' choices in this field. The focus is not on arriving at a catch-all causal relationship, such as "more institutions" equals "more cooperation" (Smith, 2004); rather, the aim is to single out the logics and conditions for varying levels of agency of EU institutions within specific contexts.

2.1. The PA approach and EU foreign policy

Actors and institutions: methodological individualism

The epistemological and ontological roots of the PA approach are in rational choice institutionalism, which also shares many of its assumptions (cf. Aspinwall and Schneider, 2000). The basis is a scientific worldview that is rooted in methodological individualism. This approach to knowledge assumes that the explanation for social phenomena can be found in the behaviour and choices of individual actors. These actors have exogenous given preferences, which they can rank on a scale and which build the basis for their utility-maximising behaviour. This perspective is especially dominant in economic sciences. However, while it is assumed that all decisions are individual in nature, it is argued that social institutions affect the choices of individuals (Arrow, 1994). Hence, institutions can be defined as "a set of rules that structure social interactions in particular ways" (Knight, 1992: 2). In the economic field, this institution is known as markets. Markets determine the prices on which individuals or firms base their strategic choices. In political science, the analysis focuses on 'structured institutions' of the political system and their effect on actors operating in them.

In particular, Fritz Scharpf's (1997) actor-centred institutionalism focuses on the interplay of methodological individualism and institutionalism, the interplay in the

behaviour of actors, and the structures in which interactions occur (see also van Lieshout, 2008). This interplay is inherent to social interaction,

“[...] as it proceeds from the assumption that social phenomena are to be explained as the outcome of interactions among intentional actors [...] but that these interactions are structured, and the outcomes shaped, by the characteristics of the institutional settings within which they occur.” (Scharpf, 1997: 1)

It is possible to identify two interpretations of institutions: as constraints, and as expressions of an equilibrium (Shepsle, 2008). In the former case, institutions act as constraints as they structure the relationship between individual actors. From this perspective institutions are ‘the rules of the game’ and actors are the players that obey these common rules. However, in the latter case institutions are also an expression of equilibrium between actors. Just as market prices change according to supply and demand, so can the institutions adapt in a political system over time. Actors have, to some extent, the potential to design institutions according to their demands; however, as institutional change is not swift, periods of disequilibria can emerge in which institutions are unstable.

The PA approach represents a middle range theory (Merton, 1949) that is nested in rational choice institutionalism. As a middle range theory, it differs from the attempts of ‘grand’ theories that want to identify one independent variable to explain a variety of social processes. As Boudon (1991) argued, middle range theories are closer to what other sciences call ‘scientific theory’, which is “a set of statements that organize a set of hypotheses and relate them to segregated observations” (p.520) . Rather than coming up with the one variable that explains PA relations in all thinkable contexts, the PA approach can be seen as a tool to explain actors’ relations and choices in particular settings.

Because methodological individualism highlights actors’ choices as the main explanation for social phenomena, one of the independent variables in this study will be the preference distribution of the principal. Nevertheless, the institution framework in which the interaction between the principal and the agent takes place structures the interaction with the agent and constrains or enables their behaviour.

Thus, control and oversight mechanisms, as well as the existence of other institutional agents, are additional variables that explain agents' discretion.

Principal-agent 101

The basic PA model distinguishes between a principal (or group of principals) and an agent. A principal enters into a relation with an agent on the basis of a contract that delegates the responsibility to perform a set of tasks (Pollack, 1997). The act of delegation comprises benefits as well as costs for the principal. In general, delegation of tasks to an agent helps the principal to circumvent the problem of collective decision-making, as it may lower the cost of cooperation. The agent ensures the functioning of cooperation through a range of tasks, such as common representation, control of agreements, agenda-management or task-specialisation (Damro, 2007; Delreux, 2009; Kassim and Menon, 2003; Tallberg, 2006). However, delegation is not without costs for the principal. These costs emerge if the agent deviates from the agreed contract – a phenomenon labelled 'agency slack'. Agency shirking and slippage are the primary forms of unintended actions of the agent. Shirking refers to minimised efforts, while slippage represents a shift from the principal's preferred outcome towards that of the agent (Hawkins et al., 2006: 9).

In order to minimise the risks of 'out of control agents', the principal has to define the discretion of the agent and invest in control mechanisms. *Ex ante*, the principal defines "the scope of agency activity, the legal instruments available to the agency, and the procedures it must follow" (Pollack, 1997: 108). By doing so, the principal determines the level of discretion of the agent. On an ongoing basis, the principal monitors the agent during the course of the action (Busuioc, 2009; Delreux and Kerremans, 2010). This can be through direct observation of the activity, or meetings with the principal in the action phase. *Ex post*, the principal has the possibility to apply positive or negative sanctions (Pollack, 1997). This can include rejecting the results reached, such as international negotiation outcomes (Delreux and Kerremans, 2010), or limiting the budget and cancelling the contract (Hawkins et al., 2006: 30).

In the simplified model, the question of whether delegation takes place and to what degree it is being monitored is a function of the principal's cost-benefit analysis.

Costs of delegation, also called agency losses (Hawkins et al., 2006), are the sum of independent actions of the principal and the costs of the control mechanisms. If the benefits of delegation exceed the agency losses, the principal will delegate a task to the agent. The agent can increase its benefit by minimising the cost of control; however, this increases the agent's autonomy – that is, “the range of independent action that is available to [the] agent” (Hawkins et al., 2006: 27), and might in turn bear the unintended risk that the agent widens its room of discretion.

PA and EU foreign policy: politics, fussy actors and complexity

The PA approach was first applied to explain market behaviour in cases of contracting and – with regards to political science – in the area of US congressional politics (Weingast and Moran, 1983). Only from the 1990s onwards has the approach been applied to explain agency in the area of IR studies and EU research (see, for example, Nielson and Tierney, 2003; Pollack, 1997). When it comes to the EU, the vast majority of literature refers to integrated policy fields, and especially focuses on the discretion of Commission actors. However, first attempts have been made to apply the PA approach to the intergovernmental CFSP and Common Security and Defence Policy (CSDP) inter alia looking at the role of the Council Secretariat (Dijkstra, 2011a; Drieskens, 2007; Klein, 2010). Application in this area is less straightforward, and meets several challenges that need to be addressed.

It is important to bear in mind that the nature of EU foreign policy differs from the policy fields that have been the main focus of the PA approach so far. The traditional focus of PA studies has been on the assessment of regulatory policies, which are less politically sensitive and show a tendency for agency slack in the absence of the principal's control. Damro (2007) concluded that distributive policies, like trade policy, are under much more scrutiny by the member states, and thus subject to tighter control. In politicised policy fields, the scope of manoeuvre for the agent might be very narrow, thereby excluding it from a PA analysis. Academics might rather refer to the agent as a “spokesperson with privileges” (Damro, 2007: 900). This argument can certainly be transferred to an even more politicised policy field such as CFSP. On the other hand, Hawkins et al. (2006) see the act of delegation of authority, as well as the *ex post* control, as the defining elements of the degree of

agency, and not the context of the policy field as such. Elgström and Larsén (2010) came to the main conclusion that the different preferences of the member states provided the Commission with a high degree of autonomy during Economic Partnership Agreement negotiations, which shows that agent discretion is possible even in distributive policy areas.

Looking at policies in the area of security and conflict management – the ‘hard’ core of foreign policy making, the question arises in how far supranational agents play a role, which is more than simple representation and rule-driven implementation. Only a few scholars have tried to answer this question. Wagner (2003) argues, with the help of a rationalist institutional choice analysis, that member states have few incentives to delegate competencies to supranational agents in matters of crisis management, as their functions are not needed to realise member states’ preferences in times of crisis. In an analysis of the agency of the General Secretariat in civil and military crisis-management, Klein (2010: 166) concluded that “agents have used their discretionary powers [...] to pursue their own preferences as well”. Another study argued that the pre-Lisbon High Representative was in a PA relationship with the rotating Presidency, which left – depending on the Presidency’s political expertise and resources – the international stage to High Representative Solana (Dijkstra, 2011a). Even though these studies acknowledge the limited scope of supranational agency in EU foreign policy, their results show that the application of a PA approach offers insights into the relationships and mechanisms between EU foreign policy actors.

Another challenge in the application of the PA approach is to identify EU foreign policy agents as unitary actors with own distinct preferences. The application of the PA approach to EU foreign policy becomes most controversial when the supranational agents, as well as the principals, are modelled as actors in their own right (see Klein, 2010). Already concerning integrated policy fields, it is questionable as to whether the European Commission can be viewed as a monolithic actor. It is an empirical fact that “the Commission is composed of hundreds of bureaucratic sub-units and thousands of individuals” with different distinct policy preferences and intra-organisational struggles (Pollack, 2003: 36). As an attempt to overcome this

empirical obstacle, a minimum amount of coherence between the sub-units is seen as necessary for an organisation to qualify as an actor (Jupille and Caporaso, 1998: 219). For Pollack (2003: 37), the analytical solution is thus not to look for a non-existent “monolithic block with uniform preferences”, but for organisations that “generally behave coherently and predictably according to a set of shared organizational preferences”. A set of shared organisational preferences is also a necessary assumption for any independent action by the agent (Hawkins and Jacoby, 2006). In substantial parts of EU foreign policy, it remains a challenge to assume internal coherence and distinct organisational preferences of supranational actors. Administrations such as the Council Secretariat, the Commission Directorate-Generals (DGs) and the new EEAS represent a hybrid mix of seconded national officials and international staff. The literature assumes that international staff tend to promote organisational goals and to manifest their organisational existence (Cortell and Peterson, 2006); however, seconded national officials may not share the same preferences (Klein, 2010). Defining unitary actors on a supranational level is thus a complicated task.

EU's complex agency

In addition, “complex agency” (Elsig, 2010) is a common feature of the EU foreign policy architecture, which can pose a problem during analyses. National parliamentary systems, for example, are normally characterised by a clear delegation chain. The electorate as the ‘ultimate principal’ delegates decision-making powers to members of a parliament, while the parliament delegates responsibilities to an executive (see also Curtin, 2007). However, the multi-level system of EU governance is characterised by a complex set of responsibilities and accountabilities of different actors that earn their legitimacy via different channels. Dür and Elsig (2011) describe three different delegation chains in EU foreign economic policies. Agents that carry out foreign economic policies can get their delegation and legitimacy via the elected national governments represented in the Council of ministers, via the elected EP, or through interest groups that directly influence activities on the EU level.

At least two delegation chains can be identified for the High Representative. First, as a representative of EU foreign policy the High Representative represents the 28 elected governments that come together in the Council of ministers. The delegation chain is thus: *electorate – national parliaments – national governments – High Representative*. Second, the EP may represent a source of legitimacy, especially expressed by its budgetary powers and nomination of the High Representative as Vice-President of the Commission. Here, the delegation chain is: *electorate – EP – High Representative*.

The High Representative is not the only EU actor that is part of a complex delegation structure. Another example is the new non-rotating post of President of the European Council (Wessels and Traguth, 2010). By nominating a President for the term of office, a number of principals (28 member states) entered into *one* contract with an agent. This structure was termed a “collective principal” (Lyne et al., 2006). The President of the European Commission has *several* contracts with principals after being nominated by qualified majority by the European Council and elected by the EP. In this case, the literature speaks of “multiple principals” (Lyne et al., 2006). The High Representative combines features of both of the above-mentioned posts. This begs the question: Is the High Representative an actor, who has multiple principals (member states, EP, European Commission), or a collective principal (member states), or both?

2.2. A simplified model

In order to avoid a conceptual overstretch of the PA approach, it is necessary to define a clear PA relationship for the High Representative. The agent in this study is defined as the High Representative. The post includes the High Representative’s cabinet, but not the EEAS, which is a separate organisational entity. This assumption follows from the provisions of the Lisbon Treaty, in which the EEAS is treated as a separate organisational body.¹² Thus, the hybrid character of the EEAS, which also comprises staff from the national foreign policy administrations, does not affect the definition of the High Representative as a distinct agent. It can be assumed that the

¹² In fact Art. 18 TEU on the High Representative does not mention the EEAS at all.

post of High Representative has the necessary internal coherence to be treated as a separate actor.

However, it is a challenge to define the High Representative's principal(s). The key indicator of a principal is its ability to delegate a task to an agent (Hawkins et al., 2006). It seems obvious that the member states (or their common representation in the EU system as 'European Council' and 'Council') can be counted as principals of the High Representative. Member states were in charge of the macro delegation,¹³ as they created the post of High Representative and the institutional framework around it. In addition, they mandate the High Representative on a day-by-day basis with the representation and planning of EU's foreign policy.

Nevertheless, the Commission and the EP also play an important role in the daily political interaction with the High Representative. Thus, one might argue that these EU institutions are additional principals of the High Representative, and that the post is confronted with multiple principals. The nomination of the High Representative after the Lisbon Treaty is a case in point. The European Council appoints the incumbent via a qualified majority and with the agreement of the (designated) Commission President.¹⁴ However, in order to acquire the post as Vice-President of the Commission, the incumbent has to go through the same appointment procedures as the other Commissioners, with hearings in the EP, which also has to confirm the whole college of Commissioners. In addition, the President of the European Commission and the EP can sanction and 'sack' the Vice-President of the Commission, which would make the incumbent ineligible for the role of High Representative within the CFSP as well. The EP, with its budget and staffing authorities, and the Commission, with its college-principal, have further ways of sanctioning unwanted behaviour from the High Representative. A role as principals for the EP and the European Commission during the day-to-day decision-making can also be partly deduced from the literature. From a historical intuitionist perspective, a greater 'say' of supranational actors is seen as an unintended consequence during daily politics, in which "European-level decision making becomes both more

¹³ Macro delegation refers to the writing of the basic mandate of an agent or its initial creation (Dür and Elsig, 2011).

¹⁴ Art. 18 (1) TEU.

prevalent and more complex [and it] places growing demands on the gate-keepers of member-state sovereignty” (Pierson, 1996: 137).

Should we thus identify and conceptualise the EP and the European Commission as ‘fully-fledged’ principals? From the standpoint of simplification of the model, and in order to arrive at a clear-cut PA relationship, such a conceptualisation is not desirable. It is possible to model the member states as the only principal.

It is a fact that the EP has potential to supervise and sanction the High Representative, for example via the budget procedure or through exchanges of views with the members of the EP (MEPs). However, MEPs technically do not *delegate* any responsibilities to the post. The member states are the only actors that can define the mandate and the day-to-day tasks of the High Representative, for example through European Council conclusions or Council conclusions on foreign policy. To put it bluntly, the EP may complain if the High Representative has not been active on a certain issue; however, the member states can actually delegate tasks within the scope of their competences. It remains open as to how the EP should be labelled from a PA perspective in the field of external relations. It is not yet a principal, as it is not able to delegate tasks to the High Representative. Neither is the EP an agent of the member states, as it is directly elected. The closest label that can be assigned to the EP is a ‘quasi principal’. As such, the EP cannot delegate tasks to the High Representative, but is already able to partly sanction unwanted behaviour, either directly, through its budgetary powers or by withdrawing support from the college of Commissioners, or indirectly through public blaming. However, the role of the quasi principal will not be the focus of this study, and will only be referred to when necessary to paint the full empirical picture.

A similar observation can be made regarding the Commission. Even though the Commission influences the discretion of the High Representative, the Commission cannot directly delegate tasks to or control the High Representative. As Vice-President of the Commission, the High Representative is bound to Commission rules and subject to the principle of collegiality among the Commissioners. Nevertheless, the member states made sure that the Vice-President’s post legally remains separate from the post of High Representative, and that the Commission does not control the

foreign policy chief in terms of political activities in matters of CFSP.¹⁵ Only in terms of the Commission's external relations does the President of the European Commission have authority over the Vice-President, as the President has overall responsibility for the Commission's external activities.¹⁶ This competence provides an interesting source of potential rivalry between the Commission President, the High Representative and the member states, and will be analysed further later in this study. However, at this point the Commission is not incorporated into the analysis as a principal of the High Representative. The Commission and the President itself are agents of the member states, and their ability to delegate tasks is limited. The European Commission and its President will be modelled as other agents of the member states, which cooperate or compete with the High Representative and thus have a positive or negative effect on the discretion of the High Representative (see below).

As all 28 member states enter into a common contract with the High Representative (and do not have 28 individual contracts), the member states can be identified as the 'collective principal' of the High Representative. The member states come to an agreement (based on the specific decision-making rules) and mandate the post of High Representative on the basis of one single contract.

So far, the different actors in the EU foreign policy architecture have been modelled for the PA analysis. The next step is to define the dependent and independent variables and formulate hypotheses on their causal relation.

2.3. The dependent variable: level of discretion

Level of discretion

The study seeks to explain the conditions under which different levels of discretion of the High Representative arise. Discretion is thus the dependent variable and needs further clarification and operationalisation. Discretion is a widely used term in the

¹⁵ See Art. 18(4) TEU: "In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 [implementation of the CFSP] and 3 [chairing of the Foreign Affairs Council]."

¹⁶ Art. 17(1) TEU.

PA literature; yet researchers have provided different definitions of the term. Hawkins et al (2006) described discretion as the *ex ante* given room of manoeuvre granted by the principal to the agent. It is thus something that the principal intentionally defines in the contract with the agent, as he deems a scope of manoeuvre necessary for the agent to fulfil the task efficiently. Actions performed within this room of manoeuvre are thus not unwanted by the principal. Diplomats in foreign countries, for example, are usually left with room for discretion by their foreign ministries, as it is expected that they will be able to perform their job best if they adapt their actions to the context on the ground. This room for discretion is further defined by the control mechanisms that ensure compliance with the granted room for manoeuvring. The discretion intentionally granted by the principal is the “net of initial delegation minus the administrative and oversight mechanisms established to limit shirking” (Pollack, 2002: 207). Huber and Shipan (2002) coined the term “deliberate discretion” – which will be used throughout this study – to describe the purposeful granted discretion of agents.

However, agents do not always stick to this predefined and intentionally granted room of manoeuvre, but might pursue their own and diverging preferences. As the agent can engage in unintentional activities, the concept of discretion has to be complemented by the concept of autonomy.¹⁷ An agent has autonomy if it acts outside of the predefined scope of action and engages in unwanted behaviour that the principal will not, or cannot, overturn. The agent operates in a ‘zone of acceptance’, as its actions are *ex ante* not ruled out and *ex post* not sanctioned, even though they do not reflect the preferences of the principal (Caughey et al., 2009). The agent thus engages in ‘agent drift’, meaning that his actions are outside the range of the principal’s preferences. If the High Representative has room for discretion that is not predefined in the mandate, and allows the incumbent to engage in autonomous actions, the term ‘unintended discretion’ will be used.

¹⁷ Even though some recent authors have used the terms “discretion” and “autonomy” interchangeably (see, for example, Delreux, 2009), a distinction offers further conceptual clarity (see Hawkins et al., 2006).

Based on these theoretical considerations, the High Representative can have three levels of discretion in a particular situation: limited discretion, deliberate discretion, or unintended discretion (see Table 2.1).

Level of discretion	Indicators
Limited discretion	The High Representative has no mandate to base an action on, or the High Representative's mandate to perform a particular task does not leave any flexibility in its implementation. All details of the action of the High Representative are described and do not leave room for interpretation.
Deliberate discretion	The High Representative has a mandate, which leaves a range of potential actions to choose from. Only the aims and/or guidelines of the action are formulated; however, if the High Representative acts outside the predefined room for manoeuvre, the activities will be sanctioned.
Unintended discretion	The High Representative has potential room for manoeuvre to perform an action, which does not represent the preference of the member states. The member states fail to sanction the actions that are not in line with their preferences.

Table 2.1: Level of discretion

Discretion in creation, in action and in review

The current study places the PA relation in a dynamic framework. It is acknowledged that the institutional design on the supranational level is not fixed, but institutions are created and altered according to the demand of the nation states. The discretion of a supranational agent must therefore be examined in the contexts of creation (does its design meet the preferences of the principals?), action (do its actions reflect the preferences of the principals?) and review (is its institutional design being altered according to the preferences of the agent?) (see Figure 2.1).

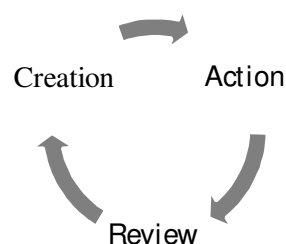


Figure 2.1: Discretion cycle

The argument for dynamic modelling is based on a point raised by Tallberg (2002). In his view, it is important not to look at different stages of institutional creation and their subsequent impact in isolation: “Why, how, and with what consequences are not three separate questions with three separate answers” (Tallberg, 2002: 24). A dynamic framework needs to look at the expected consequences of states when they create agents, the actual consequences of institutional design, and the positive and negative feedback loops that alter the institutional design of the agent. The case of the High Representative of the Union provides an opportunity to trace the question of discretion from the institutional creation to its review. Chapters 4 and 5 will thus look at the creation of the post and its supporting EEAS. Already in the creation of the post, the principal’s ability to realise its preferences is challenged. Chapter 6 looks at the discretion of the High Representative’s actions, and Chapter 7 examines how the experiences feed back into the first review of the institutional structures.

Discretion performing different tasks

The study faces a small n problem. As this study is focused on the post of High Representative of the Union, the number of cases is $n=1$. Thus, further variation is introduced by looking at the discretion of the High Representative in relation to task areas. Instead of looking at the universal discretion of the High Representative over the post’s vast job description, the study groups the tasks of the post into functionally distinct areas: agenda manager, strategist, crisis manager and communicator. The performance in these task areas is then analysed individually.

A central field of analysis in the PA literature is the agent as an *agenda manager*. In the field of EU foreign policy, the member states delegate the task of agenda-management to supranational agents. By setting, managing and focusing the choice of available policy alternatives, agents may manage to reduce the transaction cost of international negotiations. During this process they might have discretion to shape the policy output (Pollack, 2003: 47ff). From this point of view, research understands the output of political systems as a result of a decision-making *process* that follows

subsequent steps of a policy cycle with an impact on the final output (Jann and Wegrich, 2003; Major, 2011).¹⁸

The most obvious agenda-management power is the right to launch an initiative. The prime example is the sole right of initiative of the European Commission in most matters of integrated policy fields (former first pillar). The shared right of initiative of the High Representative of the Union also represents a treaty-based grant of authority, and as such a strong form of agenda-management power (Klein, 2010: 50).¹⁹ Next to the formal right of initiative, the literature also sees a possibility for “soft agenda-management” (Klein 2010, p.50) or procedural control (Tallberg 2006). Both the first-mover advantage of *setting* the agenda, and also the subsequent possibility to structure the agenda and exclude certain agenda items, are substantial parts of agenda-management. Tallberg (2006) argues that the ability to emphasise, de-emphasise and scrub items off the agenda are important elements of the procedural powers of institutional actors. The task area ‘agenda manager’ thus looks at the discretion of the High Representative over creating formal proposals, as well as over controlling the agenda as chair of the Foreign Affairs Council and Vice-President of the Commission.

As an agenda manager, the High Representative operates on what Peterson termed the “meso-level of EU decision-making” (Peterson, 1995: 75). The study at hand also looks at the “super-systemic level” (Peterson, 1995: 72), which transcends the EU’s day-to-day policy process. On this level, the High Representative potentially acts as *a strategist*. The discretion to make strategic decisions is in focus here; this level of decision-making requires discretion to make transformational decisions, beyond the management of the status quo (Burns, 1978). Strategic entrepreneurship involves

¹⁸ The impact of the agenda-management of supranational agents is a matter of debate. This debate is mainly carried out regarding the legislative and constitutional politics of the EU. Moravcsik (1993) argued that “the scope of legislative agenda-setting power [is constrained] by the Council’s previous delegation of power and ultimate decision” (p. 513). However, Pollack (2003) argued from a PA perspective that the agenda setting power of the European Commission in particular had a significant influence on the regional integration process on the continent.

¹⁹ The right to launch an initiative is less decisive, if the initiative can easily be refused or changed. Pollack (2003) argued that the institutional rules governing the veto and amendments of initiatives are part of the institutional power to launch an initiative. Voting rules are decisive, and in cases of unanimity rules “the agenda setter loses its ability to “push through’ its proposals by majority vote, and with it much, if not all, of its formal agenda-setting power” (p. 49).

framing the particular policy problem as part of a long-term development and appealing to overall goals. By creating or pronouncing such goals, a deadlock in decision-making can be overcome (Schout, 2008).²⁰ Typical for processes in strategic decision-making is that they are far less institutionalised, and favour the agency of unconstrained decision-making fora, such as the European Council (Peterson, 2001). However, the formulation of the European Security Strategy (ESS) under Solana's term as High Representative, which followed unconventional methods of policy formulation, can serve as an example (Bailes, 2005). The task description 'strategist' thus looks in particular at the High Representative's discretion to develop and reinterpret the international relations of the EU and its relations with strategic partners.

Foreign policy leaders in particular are confronted with international crisis situations that require them to act as *crisis-managers*. A crisis can be defined as "a serious threat to the basic structures or the fundamental values and norms of a system, which under time pressure and highly uncertain circumstances necessitates making vital decisions" (Rosenthal et al., 1989: 10). A crisis thus comprises three elements: a threat, uncertainty and urgency. Crisis management "refers to the organization, regulation, procedural frameworks and arrangements to contain a crisis and shape its future course while resolution is sought" (Blockmans and Wessel, 2009: 269). Boin et al. (2005) outlined five tasks within crisis-management: identify and make sense of a crisis situation, coordinate decisions with stakeholders, communicate their efforts to the public, stabilise the situation, and provide feedback on organisational practices. Here, the focus is on the subcategory of "external crises" (Boin et al., 2013: 8) outside the territory of the EU. The domain of external crisis-management has received particular attention in the development of the foreign and security policy of the EU in the 1990s and early 2000s, with former EU High Representative Solana playing an influential role in this policy field (Major, 2011; Stahl, 2011). As Solana explained in the Convention on the future of Europe: "crisis management in

²⁰ Constructivist IR literature refers to "norm entrepreneurs" (Checkel, 1999; Finnemore and Sikkink, 1998) as actors that play an important role in the creation and diffusion of norms. Finnemore and Sikkink (1998) see norm entrepreneurs as crucial for the development of international norms, as they name and reinterpret issues, thereby contributing to the development of cognitive frames of what is future-appropriate behaviour. The task of a norm entrepreneur is thus to develop long-term strategies, or visions on which the group of member states can base their collective decision-making and action.

the 21st century requires real-time reaction, high speed of contacts and co-ordination, and the capacity to deploy resources flexibly and rapidly”.²¹ When evaluating the High Representative’s activities as a crisis manager, the discretion to swiftly coordinate decision-making and implementation of crisis instrument is in focus.

Finally, the High Representative will be closely examined in terms of the posts’s function as a *communicator*. Positions of the Union have to be communicated to the outside world. In order to ensure this communication, the member states delegate the task of representing decisions or positions to EU-level actors. Member states in the EU may have the functional need to delegate their representation to an agent in various situations: “just like states cannot be represented by all citizens in multilateral negotiations, international organizations cannot be represented by all constituent member states in their external relations” (Tallberg, 2006: 28). EU-level agents have to base their communication on the acquis of decisions taken by the member states on a particular subject. This regularly opens up room for the agent’s discretion, as member state positions miss the level of detail and allow a level of interpretation (Hawkins et al., 2006: 27).

Agent’s influence on principal’s preferences

The concept of discretion used in this study is narrow. The discretion of the agent is here seen as a function of the preferences of the principal, as well as of institutional and contextual variables. The agent is enabled and constrained by its environment, rather than by its own choices. A strand of PA literature, however, stipulates a more active role for agents. Hawkins and Jacoby (2006) identified several strategies that agents use to influence the principal in a way that increases their mandate. They refer, for instance, to the European Commission, which convinced the member states to broaden its mandate in the field of human rights. Delreux and Kerremans (2010) described how EU negotiators weaken member states’ incentives to control international negotiations. This significantly widens their scope of manoeuvre at the negotiation table, and helps them to reach an international agreement. In particular, uncertainty of the principal’s preferences is seen as providing the possibility for agents to take control over their own mandates. Garret and Weingast (1993), with

²¹ WD 08.

reference to decision-making situations with a high level of uncertainty, suggested that in situations with more than one possible solution, or “multiple possible equilibria” (Garret and Weingast, 1993), supranational agents may use their informational advantage to construct focal points around which further discussions evolve. The agent thus nudges the decision-making process in a favourable direction.

While the insights of these studies and theoretical elaborations are fruitful, agents’ strategies to influence the preferences and decisions of the principals are not considered in the study at hand. The preferences of the principals are seen as dependent variables that are exogenous to the model. Furthermore, it is unlikely that conditions exist in which the High Representative of the Union can influence the decisions of the principal. One of the scope conditions for the influence of an agent on a principal is that the agent has leverage that stems from an asymmetrical dependency of the principal on the agent (Hawkins and Jacoby, 2006). However, the intergovernmental nature of EU foreign policy gives the member states some level of choice with respect to acting through the common institution – or not. Member states do not necessarily depend on the High Representative, and the High Representative has little leverage vis-à-vis the member states. Even when – for example in times of crisis – member states become uncertain about their preferences, it is unlikely that the supranational agent (with less bureaucratic resources) has a lower level of uncertainty and can use the window of opportunity in its favour.

2.4. The independent variables: what conditions discretion?

Conflicting preferences

Theoretical approaches that explain the EU and its activities often give strong weight to member state preferences. For example, liberal intergovernmentalism sees national preferences aggregated on the domestic level as a prime factor in explaining European integration (Moravcsik, 1993). In addition, theorists who give stronger weight to the ‘supranational level’ of EU policy making do not try to deny the centrality of member state preferences. Pierson (1996) starts with member state preferences as the natural place to expect to find the roots of joint policy making. However, he argues, that issue density, domestic preference change or path

dependency can lead to a situation in which gaps emerge between the preferences of the member states and those of the supranational actors.

The PA model, applied to EU policy-making, is anchored in this line of thinking. PA literature in general identifies the distribution of preferences within a ‘collective principal’ as an important factor to explain the discretion of the agent (Lyne et al., 2006). Applied to the EU and the agency of the European Commission, Pollack (1997) argues that supranational agents can exploit disagreements among the member states, as they are less likely to agree on sanctioning unfavourable agent behaviour. The idea is straightforward: the collective principal can only punish behaviour if it can agree on sanctions. If it cannot agree, due to unaligned preferences among members of the collective principal, the agent does not have to anticipate a punishment; thus, the agent has wider room for potential actions, including actions that are unwanted by the collective principal.

The challenge for researchers is to measure disagreement among the collective principal. What accounts for heterogeneous preferences? In this study, the concept of “conflicting preferences” (Pollack, 2003: 32) will be used. Here, the first condition for conflicting preferences will be the existence of contradictory positions on a particular issue within the collective principal. Preferences are seen as “a set of consistently ordered goals or objectives [...] defined [...] across alternative future states of the world” (Moravcsik, 1993: 481). Members of the collective principal define their position *before* they interact with each other and try to aggregate their preferences.

However, the static condition of the existence of contradictory positions within the collective principal is a necessary, but not sufficient, condition. Looking solely at the positions before the member states try to aggregate their preferences underestimates their ability and flexibility to arrive at a strong common position regardless. In particular, the application of bargaining and negotiation analysis to the cooperation within the Union has shown that member states are capable of aggregating even unaligned preferences, as they have varying levels of preference intensity, and engage in coalition-building and issue linkage (Moravcsik, 1993). The essence of the argument is that contradictory preferences do not automatically lead to a failure to

agree, but that the threat of non-agreement, weak preferences of some member states, and the creation of ‘package deals’ allow the member states to arrive at a common position. Several well-developed empirical accounts exist of how member states apply strategies to aggregate their preferences (Elgström and Jönson, 2005; Moravcsik, 1998; Tallberg, 2006): for example, smaller member states side with larger member states on certain issues, as they do not have strong preferences on certain issues; alternatively, member states agree to a compromise, as they anticipate that the favour will be returned on other issues, or in future negotiations. Due to their ability to aggregate their preferences, member states can sanction agents’ unwanted behaviour in spite of contradictory positions. The second condition for conflicting preferences is thus that member states fail to overcome their different positions. The failure of the aggregation process is therefore a necessary indicator of conflicting preferences.

Perspective on preferences	Condition	Indicators
Static, pre-strategic	Members of the collective principal have different positions on a specific issue	At least two member states can be assigned with contradicting positions.
Dynamic, strategic	Members of the collective principal fail to aggregate their preferences	Member states do not engage or succeed in brokering a common position vis-à-vis the agent, involving coalition-building and issue linkage.

Table 2.2: Conditions and indicators for conflicting preferences

If both conditions are met, the collective principal has conflicting preferences. This leads to the following hypothesis:

H1: The discretion of a supranational agent is conditioned by the preferences of the collective principal. In cases where the collective principal has conflicting preferences, the agent does not have to anticipate sanctioning of its behaviour, leaving the agent with unintended discretion.

Note that the above hypothesis only applies to tasks that have already been delegated to the agent. If there is yet no mandate for the agent, and no delegation has taken place, a failure of the collective principal to aggregate its preferences leads to a failure of delegation. For example, if the member states do not agree on a common

position in relation to an international event, the High Representative will receive no mandate and will be unable to represent the member states.

Control and oversight mechanisms

The collective principal is faced with a dilemma. On the one hand, it needs to grant the agent sufficient scope of manoeuvre in order to carry out its task efficiently; on the other, the collective principal wants to avoid costs stemming from unwanted behaviour. Therefore, the collective principal has to invest in control mechanisms in order to avoid the agent ‘running loose’. This is done during the design of the mandate (*‘ex ante’*), while the agent is carrying out its tasks (*‘ongoing’*) and in the decision phase, when the principal accepts the result and makes a decision about prolonging the contract (*‘ex post’*).

Ex ante, the principal defines “the scope of agency activity, the legal instruments available to the agency, and the procedures it must follow” (Pollack, 1997: 108). In this way, the principal determines the level of discretion the agent has. The principal can either give detailed ‘rule-based’ instruction on how to carry out the mandate, or grant more discretion to the agent by merely defining the goals, without specifying how to achieve them (Hawkins et al., 2006: 27). Another means of *ex ante* control is to screen and select an appropriate agent that ideally mirrors the preferences of the principal. In EU foreign policy, the member states have several possibilities for *ex ante* control of the EU-level agents. Member states decide on the design, scope, mandate, budget and staffing of EU-level agents such as the High Representative or special representatives. These agents can only become active if such a decision is made by the member states. It is explicitly stated in the treaties that CFSP is “defined and implemented by the European Council and the Council acting unanimously”.²² The “strategic interests and objectives” of the EU’s external relations are defined by the European Council.²³

On an ongoing basis, the principal monitors the agent during the course of the action (Busuioc, 2009; Delreux and Kerremans, 2010). This can take place through direct observation of the activity, or meetings with the principal during the action phase.

²² Art. 24 (1) TEU.

²³ Art. 22 TEU.

Supervising the activities of the agent prevents the development of informational asymmetries between the agent and the principal, which the former could use to its own advantage (Vaubel, 2006). These considerations have been applied to study the EU's international activities. In the case of trade negotiations, the EU negotiator is monitored through participation in international meetings, as well as coordination and committee meetings (Delreux and Kerremans, 2010). Specifically, the role of the permanent member state delegations in Brussels and the constant interaction in working groups (WGs) has to be highlighted. The Political and Security Committee (PSC) is the 'linchpin' in the field of CFSP: through the committee the member states not only coordinate their positions, but also monitor the activities of the EU-level agents (Duke, 2005; Juncos and Reynolds, 2007). In addition, the meetings of the permanent ambassadors to the EU (the Comité des Représentants Permanents (Committee of Permanent Representatives), or Coreper) are important in the control of institutional and horizontal issues of EU foreign policy. Furthermore, staff rotating from the foreign ministries into the bureaucracies in Brussels and abroad makes the agents' activities transparent to the member state capitals (Klein, 2010).

Ex post, the principal has the potential to apply positive or negative sanctions (Pollack, 1997). This can include rejection of the results obtained, such as international negotiation outcomes (Delreux and Kerremans, 2010), or limitation of the budget and the prolonging of the contract (Hawkins et al., 2006: 30). Here, the member states decide whether to accept the task carried out by the agent. For example, member states have to ratify international agreements²⁴ and decide on initiatives developed by the High Representative upon request.²⁵ In addition, the mandate of the High Representative can be terminated, and needs to be prolonged after it ends automatically after five years. In the multiannual framework, member states decide how much budget to grant for the next programme period. While these institutional and procedural mechanisms of control theoretically allow for a rather costly way of monitoring the actions of the High Representative, member states might also exert control via a system of so-called "fire alarms" (McCubbins and Schwartz, 1984: 166). The idea is that actions within the room of unintended

²⁴ Art. 218 TEC.

²⁵ Art. 31 TEU.

discretion by the High Representative, such as unauthorised comments or controversial initiatives, trigger ‘fire-alarms’ in form of, for example, media coverage or parliamentary debates. The agent anticipates the political costs resulting from ‘alarms’ and adheres to actions within its deliberately granted room of discretion.

It follows that the member states’ toolkit for ex-post sanctions is especially differentiated. One can roughly distinguish between formal and informal sanction mechanisms. Formal sanction mechanisms are determined by the treaties and focused on the formal contracting between the member states as the collective principal and their agent, the High Representative. Formal sanctions, which imply decision-making in the Council, mostly include harsh measures, such terminating the mandate or altering the budget. They can also include the rejection of proposals for a CFSP decision. Decision-making rules play a dominant role, as they formally stipulate the majority needed to sanction the High Representative’s behaviour.

Informal sanction mechanisms, however, do not have their basis in the formal rules, but aim at *ex-post* questioning of the legitimacy of the High Representatives behaviour. Member states have the possibility to distance themselves from statements or activities of the High Representative. Furthermore, they have the possibility to act unilaterally outside the EU framework, for example through own diplomatic missions. As a consequence, the High Representative costs lie in the loss of reputation. In contrast to formal mechanisms, informal sanction mechanisms can more easily be deployed by single member states as well, if their clout on the specific issue is significant. Hence, while ex post sanctioning via ‘blaming and evading’ is less formal, it may still lead to tight control of the agent’s activities.

All in all, many possibilities exist in terms of sanctioning the agent’s behaviour. In Table 2.3, for each of the three dimensions of control (*ex ante*, ongoing and *ex post*), an indicator is assigned for what accounts ‘tight’ or ‘loose’ control and oversight mechanisms.

Ex ante	Ongoing	Ex post
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Tight	Rule-based, detailed mandate defining task and implementation	The collective principal is present in the implementation	Each member of the collective principal can sanction unwanted behaviour by the agent
Loose	Mandate defines basic tasks and goals, but no details on how to reach them	The agent has to report regularly to the collective principal	Only a majority of members of the principal can sanction unwanted behaviour by the agent

Table 2.3: Indicators for control and oversight mechanisms

The following hypothesis is thus proposed:

H2: The discretion of a supranational agent is conditioned by control and oversight mechanisms that monitor its activities. In cases where the collective principal installs loose ex- ante, ongoing and ex-post control and oversight mechanisms, the agent has unintended discretion over its activities.

Time pressure

The interaction between the principal and the agent does not take place in a vacuum. One critical contextual factor that potentially influences the discretion of an agent is the time pressure under which the delegation and control by the principal takes place. Time pressure leads to imperfect delegation and control, and can lead to unintended discretion.

Delreux and Kerremans (2010) identified this logic when they analysed EU negotiators in multilateral negotiations. EU negotiators present the position on the basis of a mandate of the ‘133 committee’, which consists of member state representatives. The time pressure of the international negotiations often leaves the member state representatives with little time to discuss the various details. By the time the EU negotiator has to go back to the negotiation table, the mandate may be lacking details, thus leaving wider room for discretion. Moravcsik (1993) sees particular room for enhanced supranational agency if member states with conflicting preferences face time pressure. With member states being in need of an agreement, they are more prone to compromise and except increased agent discretion. The indicator for time pressure is the existence of an approaching deadline. The hypothesis for time pressure is:

H3: The discretion of a supranational agent is conditioned by the time pressure of the decision-making context. In cases where the collective principal is under time pressure to arrive at a decision, it will not have enough time to formulate all details of the mandate, and will thus leave the agent with deliberate discretion.

Agent interaction

So far the relation between the collective principal and the agent has been seen in isolation from the complex institutional framework that their activities are nested in. However, as already discussed above, the process and structures are often less ‘tidy’ than a simple PA model could replicate. In the case of EU foreign policy, for example, the bureaucratic structure is much more complex, with different bureaucratic actors assigned to implement various tasks under specific decision-making and control regimes.²⁶ The explanatory power of the study can be increased if additional complexity is introduced to the analytical model. To that end, interaction with other supranational agents is included as an additional variable that explains the agent’s discretion.

The argument developed here on the effects of interaction between supranational agents is inspired by the bureaucratic politics approach (Allison and Halperin, 1972; Allison, 1971; Downs, 1966). Instead of looking at the political administration of a nation state as one unitary actor, this approach focuses on competing or cooperating bureaucratic actors within an administration, and on their opposing organisational interests, varying resources, and accesses to the decision-making process. Insights from the bureaucratic politics approach add another important dimension to the study at hand. Control and oversight mechanisms are important to assess the constraints of the agent by the principal. However, here the focus is on the constraints of the agent at the supranational level, in the context of bureaucratic politics in Brussels.²⁷

Central to the argument is the fact that a government’s (or, here, the bureaucracy in Brussels) actions arise as the result of a bargaining process between different bureaucratic actors with different levels of power and resources to influence the outcome (Allison and Halperin, 1972: 42). The formal and informal rules of the

²⁶ For an overview, see Vanhoonacker (2011).

²⁷ On the use of the bureaucratic politics approach in a principal-agent framework and the application to the analysis of different EU actors in crisis management see Klein (2010: 43–45).

process have an influence on the ability of the actors to get their position through in the process (Halperin and Clapp, 2006: 105–111). Agent interaction can thereby have an enabling and restrictive effect on discretion.

Agent competition has a restrictive effect on the High Representative. If the High Representative is in competition with the Commission as the other EU-level agent, each of the supranational agents will restrict the other’s range of possible actions. Klein (2010) termed this phenomenon “horizontal control”, and specified that it stems from overlapping and ambiguous defined competences of two supranational agents.²⁸

Nevertheless, agent interaction can also have an enabling effect, thus providing the agents with unintended discretion. Research on EU agents has shown that they possess a common set of preferences, which is directed at the deepening of the European integration process and transforms agents into “engines of European Integration” (Pollack, 2003). According to this argument, supranational agents have a genuine preference to widen their area of competence. In particular, Pollack (2003: 389) found that the Commission used its powers to extend the scope of its own in negotiations with the member states. For the analysis here, it is thus suggested that – in the absence of overlapping competences or diverging preferences – agents will cooperate with the aim of widening their competences on a specific matter. To that end, they will use possibilities of cooperation that enhance their position in relation to the member states. For example, the Commission and the High Representative can increase the costs of member state control by actively limiting the possibility of oversight with respect to their activities and coordination.

Agent interaction	Indicators
Competition	Overlapping competences between the agents and diverging preferences
Cooperation	Clearly defined division of competences between the agents or converging preferences

Table 2.4: Indicators for agent interaction

²⁸ In that case, the analysis concentrated on the Commission services and the Council Secretariat in the field of EU crisis management.

In order to simplify the analysis, the focus here will be on the interaction between the European Commission and the High Representative, supported by the EEAS. The following hypothesis will be tested:

H4: The discretion of a supranational agent is conditioned by its interaction with other agents, as follows:

- a) In cases where there is competition among the agents, the agents will not have the discretion that they were deliberately granted by the principal.*
- b) In cases where there is cooperation among the agents, the agents will have unintended discretion.*

Conclusion

This chapter outlined how the PA approach can be applied to analyse the post of High Representative of the Union. The chapter presented a new perspective to evaluate the potentials of the post. Based on previous literature, the PA framework had to be applied to the foreign policy structures of the EU. The High Representative was defined as the agent, while the member states were identified as the collective principal. In the context of this study, the European Commission will be treated as another agent of the member states.

The discretion of the High Representative is the dependent variable. ‘Limited discretion’ refers to a situation in which the agent either receives no mandate or no flexibility in the implementation of the mandate. If the collective principal intentionally grants discretion to the agent to allow for an efficient implementation of the mandate, the term ‘deliberate discretion’ will be used. Finally, the agent can also gain ‘unintended discretion’ if the actions are not in line with the preferences of the collective principal.

Four independent variables are defined that determine the discretion of the High Representative. Conflicting preferences of the members of the collective principal prevent the principal from sanctioning unintended behaviour as their relation to the agent is built on a single contract. In case of an existing mandate, changing the contract and thus sanctioning the behaviour is difficult for the collective principal if

faced with conflicting preferences, leaving the agent with unintended discretion. Control and oversight mechanisms of the collective principal ensure that the agent does not overstep its mandate. If only loosely controlled through the definition of the mandate, ongoing oversight and demanding sanctioning criteria, the agent might realise preferences that are not in line with those of the collective principal. Time pressure is another variable that constrains the collective principal's ability to realise its preferences as the principal is forced to leave aspects concerning the implementation of the mandate open in order to arrive swiftly at an agreement. As the agent is part of a wider bureaucratic system, it relies on the interaction with other agents, in order to realise its preferences. While cooperation with other agents increases the agent's discretion by putting the collective principal in an unfavourable position, agent competition has a negative effect on agents' discretion.

By focusing on these particular conditions the theoretical framework suggests that the treaty provisions that grant institutional powers to the High Representative do not fully condition the agency of the post. The discretion of the post is determined by the ability of the member state to agree on, and control, EU foreign policy. These variables – preference distribution, control and oversight mechanisms, time pressure and agent interaction – condition the discretion of the new post in specific situations. Under certain conditions, the High Representative has little say on the conduct of the EU's foreign policy, and its institutional powers of *inter alia* being the CFSP Presidency and sitting in the European Commission remain dead treaty letters. But before we go into the empirical investigation of the thesis, the next chapter discusses the methodology used for the analysis.

3. Methodology

The analysis of the post of High Representative is constrained by a small n problem. By definition, the analysis of the new Lisbon Treaty post is limited to the only available case of the first office-holder's term, between 2009–2014. Given the unique construction of the post, and, more generally, of the EU as a regional organisation, the post cannot easily be compared to other foreign policy actors. The chapter thus suggests a methodology that increases the trustworthiness and credibility of the results through structured engagement with the single case at hand. This is achieved by looking into several embedded cases that offer variance in the identified factors of interest, obtaining additional insights through expert interviews, using process-tracing to reveal causal relationships within cases, and a structured approach to analyse the qualitative data.

3.1. Case study design

An embedded case study design

The case selection is an integral step in the research design, and should “provide the kind of control and variation required by the research problem” (George and Bennett, 2005: 83). The study used an embedded multiple-cases design. As defined by the research question, the case that this study explores is the post of High Representative of the Union. However, if only an holistic view on the High Representative is taken, the research bears the risk “that the entire case study may be conducted at an unduly abstract level” (Yin, 2009: 50). Yin (2009) recommends splitting the case, when possible, into several embedded units. This suggestion was taken up in this study, so that the research focuses on several embedded cases within the case of the High Representative.²⁹ These embedded cases add variation in the analysed variables, and thus help to make statements about the causal relationship of the main case.

²⁹ Note that the embedded units do not have to be embedded *cases*. The approach taken here differs from the embedded case study approach described by Yin (2009), insofar as Yin divides the case into

The selection of the embedded cases is theory-driven, and thus closely linked to the dependent variable ‘discretion’.³⁰ The discretion of an agent can be more closely evaluated in the creation of its office, during the actions that it carries out, and when its office is being reviewed. In addition, the High Representative has different task areas, which allows for further variation within the single case. These task areas were identified above as agenda manager, strategist, crisis manager and communicator. Table 3.1 provides an overview on the six embedded cases selected according to these criteria. Each case thereby represents an act of delegation, or failed delegation, that matches the task area.

	In action					
	In creation	Agenda manager	Strategist	Crisis manager	Communicator	In review
Embedded case	Setting up the EEAS	CFSP Presidency	Strategic doctrine of the EU	Response to Libya crisis	Statements and declarations	Review of the EEAS
Act of delegation	Art 27(3) TEU	Art 18 (2&3) TEU	For example, European Council Conclusion, September 2010	No specific delegation	Article 18(2) TEU	Council decision on EEAS, July 2010

Table 3.1: Embedded cases

Two other criteria ensured that the case selection was appropriate. First, the embedded cases selected are all comparable, as they are all “instances [...] of only one phenomenon” (George and Bennett, 2005: 69). All of the embedded cases share the common feature that they represent a case of delegation of a task from the EU member states to the High Representative. This criterion of comparability excluded other potentially very interesting cases, such as the negotiations that the High Representative conducts with Iran about its nuclear programme on behalf of E3+3. However, here, the principals are the ‘EU big three’ (Germany, France and Britain),

several embedded *units of analysis*. However, both approaches arguably have a positive effect on the internal validity of the case study.

³⁰ As George and Bennett (2005: 83) argue, a selection of cases that is guided by a prior defined analytical framework is a valid approach.

plus the other permanent members of the United Nations Security Council (UNSC), which makes this case less comparable.³¹

Second, the selected embedded cases, though comparable, have a certain degree of variance. The embedded cases all represent very different activities of the High Representative: from setting up an administration, to issuing statements and declarations. After an initial round of interviews and a survey of the literature on the topic, the cases promised to provide a diversity of values regarding the dependent and independent variables under scrutiny. Thus, the selection of the embedded cases also fulfils the requirements of the diverse case method (Seawright and Gerring, 2008), which seeks to replicate the full variation of the overall population of possible cases. Based on preliminary findings, the High Representative, for example, had limited discretion in the response to the crisis in Libya, while interviewees identified unintended discretion during the setting up of the EEAS. The independent variables also vary across the embedded cases. The early analysis showed that member states set up different levels of control: they rather loosely controlled the strategic partnership review, but in the case of Libya closely monitored the unfolding situation. Variation can also be found for other independent variables, as time pressure, preference distribution and cooperation with the Commission seemed, in a preliminary analysis, to vary from case to case.

3.2. Expert interviews

A total of 52 expert interviews were held in Brussels and in two of the member state capitals (Table 3.2. See also research notes in Appendix I).

³¹ The High Representative conducts the Iran nuclear talks on behalf of Germany, France, the UK, the US, China and Russia. The institutional structure of the EU is used in various ways. The Political Director and the Strategic Unit of the EEAS are involved in the preparation of the talks, and stay in touch with the political directors of the national foreign ministries. Other EU member states are occasionally consulted via the PSC. However, other member states have limited control and are not represented by the High Representative (#42, Meier, 2013).

Commission	EEAS	EP	Council, European Council	Member states	Total
11	17	7	3	14	52

Table 3.2: Interviewees and their affiliation (see Appendix I b) for more detail)

The purposive sampling method was used for the interviews. Within this method, the goal is not necessarily to achieve a representative sample of a target population, but to study a diverse and limited number of observations guided by the purpose of the study (Johnson and Reynolds, 2012: 239). Similarly, in the study at hand the goal was not to interview a representative sample of all experts that take part in the process of EU foreign policy making following the Lisbon Treaty. Rather, the selection was guided by the research question, so that officials, ambassadors and MEPs from different bodies, member states and parties were considered vital to evaluate the issue at hand. To further explore the target population, snowball sampling (Crossman, 2006) was used; this enabled the interviewees to suggest other valuable peers that could provide additional information on the subject. While snowball sampling is a useful approach to explore hidden populations,³² it might lead to bias in the selection of interviewees, as the researcher might be referred only to those within the close network of the person interviewed. In order to minimise bias in the sample, a certain degree of representativeness in the selection was accounted for. For example, MEPs from the major political groupings in the EP, and representatives from ‘big’ as well as ‘small’ member states, were interviewed. The interviews were partly carried out in connection with a study being conducted by the Centre for European Policy Studies in Brussels (Helwig et al., 2013), within which three researchers (including the author of this study) carried out the interviews.

The following units of investigation were identified as important for the evaluation of the research question:

³² Officials and diplomats working on EU foreign policy are not necessarily hidden. However, the identification of relevant interviewees is often difficult, given the complex structures of the EU.

Commission	EEAS	EP	European Council/ Council	Member states
General Secretariat	HR/VP Cabinet	Foreign Affairs Committee	Cabinet of the President	PSC
DG DEVCO				Political Affairs
DG ECHO	Corporate Board	(focus on MEPs of EPP, S&D, ALDE, Greens)	DG C – Foreign Affairs, Enlargement and Civil Protection	Departments in capitals (focus on Germany, Finland)
DG Trade	Political Affairs Department	General Secretariat		
DG Enlargement				
Foreign Policy Instruments Service	Managing Directors Working Group Chairs			

Note: DG DEVCO = *Directorate-General for Development and Cooperation – EuropeAid (Commission)*; DG ECHO = *Directorate-General for Humanitarian Aid and Civil Protection (Commission)*; EPP = *European People’s Party (European Parliament)*; S&D = *Socialists and Democrats (European Parliament)*; ALDE = *Alliance of Liberals and Democrats for Europe (European Parliament)*.

Table 3.3: Purposive sample of interview units

The expert interviews followed a semi-structured questionnaire and were carried out between 2011 and 2013 (for more information on the construction of the questionnaire, see Appendix I).

3.3. Process tracing

The case studies were conducted using a ‘causes-of-effects’ approach, which is directed at explaining the outcome of a small number of cases. As Bennett and Elman (2006) explain, causes-of-effects approaches “do not look for the net effect of a cause over a large number of cases, but rather how causes interact in the context of a particular case or a few cases to produce an outcome.” Process tracing is a common method by which to look for causal relations within a case (Bennett and Elman, 2006). George and Bennett (2005: 206) defined process tracing as a method that attempts “to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the

dependent variable.” It is not the number of cases, observations or independent variables that is important, but rather how the evidence in the particular case matches up against alternative explanations.

The design used here thus differed from a quasi-experimental design, in which the different cases are treated akin to experiments, while variables and context are treated as if they can be controlled (Gerring, 2007). The research at hand started by acknowledging the complexity of the ‘reality’ of the decision-making processes and the existence of a high number of factors that led to a particular outcome. The previous chapter already deduced potential causal processes from the existing literature that connect a number of independent variables with the level of discretion of the High Representative. By tracing the processes that led from the independent variables to the resulting level of discretion, the developed hypotheses could be tested and, if necessary, refined.

The causal process was aggregated from what Collier et al. (2004) call ‘causal process observations’ which they define as an “insight or a piece of data that provides information about a context or mechanism” (p. 252). The aim of the research was to connect causal process observations to a closed causal chain between the dependent and the independent variable. This process can take different forms. The simplest form is a linear causal process, in which a series of observations links together to form a closed chain (see Figure 3.1, a). However, as George and Bennett (2005: 206) stated, “many or most phenomena in international relations [...] are characterized by more complex causality, for which the concept of linearity is misplaced.” Thus, they mention additional forms that a process can take. A convergent process occurs when several observations lead to one outcome, and thus several paths join into one (see Figure 3.1, b). A third form is an interactive process, in which “two causal variables interact and are not independent of each other” (George and Bennett, 2005: 212). The outcome of the interaction determines the future path (see Figure 3.2, c).

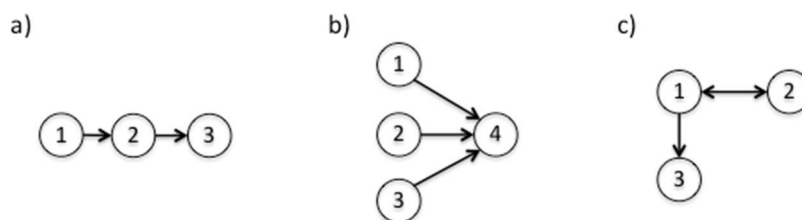


Figure 3.1: Different forms of processes (based on George and Bennett, 2005: 212)

The processes, if traced carefully, can be summarised in a diagram. Gerring (2007) promotes this approach. He also admits that there is always a level of interpretation on the part of the researcher, and that the identification of steps and causal processes is a matter of judgment: “the same causal process might be diagrammed in different ways” (Gerring, 2007: 181). Nevertheless, “a diagram is a useful heuristic, forcing the author to make a precise and explicit statement of her argument” (Gerring, 2007: 182). One way of visualising a process was put forward by Mahony (1999, p. 1166) who visualised the process that led to the breakdown of the French state. A similar approach to visualising the process was used in this study. An example can be found in Appendix I.

3.4. Qualitative Content Analysis

The process within each of the analysed embedded cases is a chain of causal process observations. But how was the data collected, reduced and sorted in order to capture the complex ‘reality’ of a causal process? The study used methods of QCA to get from a large text-based dataset to explanations of causal processes. QCA can be defined as “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh and Shannon, 2005: 1278). Thus, one essential characteristic of this approach is that it cannot be conducted without a level of interpretation on the part of the researcher. As Hsieh & Shannon (2005) point out, the process “goes beyond merely counting of words” (p. 1278), since it requires the researcher to infer meaning from both explicit and inferred communication.

Given the theory-guided nature of this research, the content analysis is directed by the theoretical framework of the study. Mayring (2010) describes this approach as

deductive category application. Here, the researcher approaches the material with predictions about the variables of interest, and their causal connections. However, an initial scheme for the interpretation does not mean that the researcher must be blind to additional explanations, themes and causal relationships stemming from the material. Researchers can combine deductive and inductive approaches, and thereby refine their initial categories and understandings (see Fereday and Muir-Cochrane, 2006).

Based on the advice of Mayring (2010), as well as Gläser and Laudel (2011), the following multi-step approach was taken in the present study (see Figure 3.2). The overall material on the subject of interest was very broad, and included interviews, secondary literature, official documents, as well videos of public speeches, interviews and hearings. In cases where the material was not yet written down, a written version of the relevant content was produced. The first step was to identify the relevant data from the large amount of information at hand. For example, the interviews included a lot of unnecessary data, such as answers to introductory questions, which tended to be purposefully broad and often did not provide additional information. Another example relates to data from European Council conclusions: while the heads of states or government usually cover a broad agenda, only a few passages or even sentences were related to the research question.

The step of selecting the material should not be underestimated; as Gläser and Laudel (2011) note the first step is already subject to the interpretation of the researcher. Overall, the material was selected based on the research question and theoretical considerations (such as the variables that were of interest).

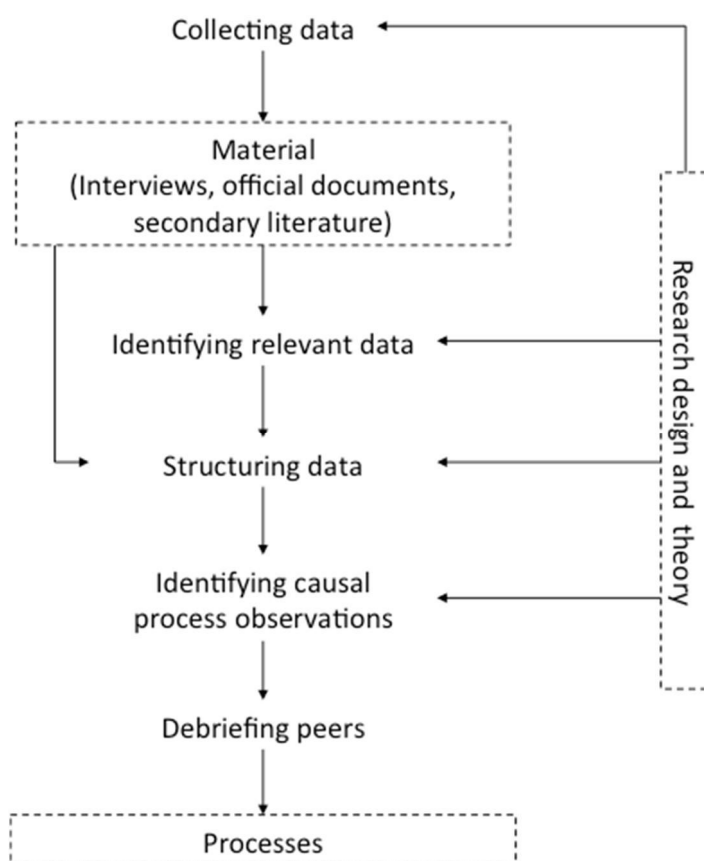


Figure 3.2: Qualitative Content Analysis (author’s own compilation based on Gläser and Laudel, 2011)

The second step was to structure the relevant data. In order to do this, codes were attached to the various pieces of information, with similar pieces of relevant data labelled with matching categories. For this purpose, the QCA software NVivo 10 was used to organise larger collections of data. NVivo made it possible to organise and retrieve qualitative data in a structured way. Within the programme, text-based material was tagged with codes, which assigned categories to specific pieces of information. After this coding process, the software was able to display all information within a specific category across all sources in an overview.

In the third step, the structured data was used to identify causal processes, by ‘stitch’ together the process observations to chains of events. Via NVivo, different accounts from different sources were aggregated and compared in order to develop a comprehensive picture of the processes. At the same time, ‘black spots’ in the data were revealed, which led to more material being collected – that is, relevant

information being sought from the secondary literature, or additional interviews being conducted. Once this step was completed, the researcher had an account of a process; to some extent, this was conditioned by the available material, the interpretation of the researcher, and the theoretical perspective taken.

In the last step, this account of the process was subject to a process of peer debriefing in order to increase the trustworthiness of the results, and decrease the risk of bias in the interpretation. The concept of peer debriefing goes back to Lincoln and Guba (1985), and was developed in order to enhance the credibility of qualitative research. It allows peers that are not directly involved in the research study to critically assess the researcher's methodology, findings and interpretations, and to test them against alternative hypotheses. The peers included those from the research community, as well as practitioners during later rounds of interviews (an overview of presentations of research results can be found in Appendix I). This step was helpful, in order to further avoid a biased interpretation of the material. The research results are presented in the following chapters.

4. The making of the High Representative

At the beginning of the twenty-first century, Europe was “at a crossroads” (European Council, 2001). The intergovernmental conferences (IGCs) preceding the Maastricht, Amsterdam and Nice Treaties constructed a complex ‘temple’ that constituted the design of the EU institutional architecture. In the area of foreign policy in particular, the Union was split between pillars and policy-making procedures that hampered Europe’s global ambitions. In addition, the community of states was scheduled to incorporate a large number of new entries to the ‘club’ from the east and south in 2004. A need for simplification of the institutional structure seemed imminent, and was combined with expectations that it would enable the European idea to be reconnected with its citizens.

At the same time, a complex administrative structure had grown in Brussels around the office of the High Representative for the CFSP. Unsurprisingly, the reorganisation of the EU foreign policy architecture was high on the agenda of the Convention of the future of Europe³³ that took place in 2002/2003. Would the delegates from the member state governments and the European and national parliaments be successful in their ambition to simplify the EU’s foreign policy and make it more effective?

4.1. The Amsterdam High Representative for the CFSP

The history of the High Representative of the Union starts at the 1997 IGC, which led to the Treaty of Amsterdam. For the first time, the member states considered installing a permanent representative for their CFSP. The proposal came from the French; the initial idea was to create an office for a high profiled and independent ‘Mr CFSP’ outside of the existing structures. However, other member states were more cautious, and wanted to strengthen the post of Council Secretary-General in the preparation and implementation of foreign policy decisions (McDonagh, 1998: 116). Among the latter groups was Germany, which wanted to make sure that the new post

³³ In the following, this is also referred to as the ‘European Convention’ or ‘Convention’.

would be embedded in the existing institutional framework (Dijkstra, 2011b). Eventually, the Amsterdam Treaty established a double hat: the Secretary-General of the Council would also function as the High Representative for CFSP and support the rotating Presidency on foreign affairs.

The Treaty lines still left room for discussion. Should the incumbent be a diplomat with the focus of heading the Council Secretariat, or a politician, with the profile to significantly increase Europe's visibility in the world? While France apparently had former President Valéry Giscard d'Estaing in mind for the job (Moravcsik and Nicolaïdis, 1999: 64), Britain wanted a low-key bureaucrat (Dijkstra, 2011b). Speculation on the personality question came to an end after the 1998 Vienna European Council called for "a personality with a strong political profile".³⁴ The 1999 Cologne European Council appointed Javier Solana, former Secretary-General of NATO and Spanish foreign minister, as the High Representative for CFSP. The escalation of the crisis in the Western Balkans prompted the member states to choose a foreign policy chief with good high-level international contacts and experience.

A policy planning and early warning unit (in general and in the following referred to as 'policy unit') supported the new EU foreign policy chief in its work. A co-author of the draft declaration on the policy unit admitted that it was "designed to play a role, somewhat akin to that of the Commission in relation to normal Community business, in addressing issues and in identifying policy options from a European perspective" (McDonagh, 1998: 116). One goal of setting up the unit was "to ensure full coherence with the Union's external economic and development policies."³⁵ To that end, the policy unit needed to establish appropriate contacts with the Commission. The policy unit had the task of assessing common policies in general, as well as analysing sudden international events for the Presidency and the High Representative, which were presented *inter alia* in policy option papers.

The staffing and organisation of the policy unit has received heightened scholarly attention (for example Dijkstra, 2011b; Duke, 2011). In order to construct the unit, staff was drawn from the Council Secretariat, member states, and Commission, as

³⁴ Conclusions of the European Council Meeting in Vienna, 11–12 December 1998 (Hill and Smith, 2000: 182ff).

³⁵ Amsterdam Declaration on the establishment of a policy planning and early warning unit.

well as the WEU Secretariat. In the early years, the seconded nation diplomats proved to be an important source of information and a valuable means of communication with the member states. They were usually appointed to a senior level and had high-level contacts back home; in addition, still hooked into their national diplomatic networks, they had access to intelligence from their delegations around the world. The declaration of the Amsterdam Treaty on the policy unit stated that the member states should support the unit with “relevant information, including confidential information”.³⁶ Though probably never intended to such an extent, the policy-unit staff coming from all of the member states constantly provided Solana with confidential intelligence from their diplomatic networks, which was “a great help to him” (House of Lords, 2005: 54).

The legacy of the informal and formal structures that grew around the office of the High Representative in the early 2000s is mixed. On the one hand, the intergovernmental set-up of the administration in the Council can be interpreted as an asset that contributed to Solana’s presence in the world. The member states wanted a strong, well-briefed and visible High Representative who would provide resources, as well as intelligence, to the policy unit and his personal office. On the other hand, the member states were growing increasingly aware of the need to control their creation and install mechanisms that limited Solana’s discretion. As Duke (2011: 36) noted: “the investment of the member states [...] into the support of the High Representative may represent a form of Brusselisation, but it was also a mean to harness the High Representative.”

Meanwhile, the informal and ad-hoc structures of the High Representative office, though an expression of the pioneering spirit of Solana, were not always easy to manage and soon reached their limits. Interviewees for this study who started working in other parts of the EU foreign policy architecture after the Lisbon Treaty reform had a very positive – if not nostalgic – view on the old days under Solana. According to them, flat hierarchies and little red tape allowed them to be directly involved in, and to shape, the policies within their portfolios. Members of the policy unit were an ideal bridge to national foreign policy administrations, as they had close

³⁶ Art. 5, Declaration to the Final Act on the establishment of a policy planning (Hill and Smith, 2000: 181).

links to the capital and were loyal to Solana at the same time. Solana often allowed his staff to work freely on their own responsibility, which made the whole enterprise quick and flexible.³⁷

Outside observers provided a more sober analysis. As Dijkstra (2011b: 78) points out,

“[C]onsidering all his relentless efforts to put European foreign policy on the map, one of the areas where Javier Solana spent little political capital was in the development of his own organisation.”

He delegated his duties as Secretariat-General of the Council largely to the deputy head of the Council Secretariat, Pierre de Boissieu (Duke, 2011). However, in addition, the management of institutional developments that were closer to the core of his portfolio received less attention. The development of the civilian crisis-management structures is a case in point, as it lacked integration with the military aspects of crisis-management, as well as with the crisis-management structures of the Commission. Given the busy schedule of Solana, he had less direct contact with his staff back in Brussels, and relied on his personal office to manage to deal with the management of the headquarters (Dijkstra, 2011b).

A growing need of the member states to oversee dealings in Brussels, and the limits of ad-hoc structures in the Council Secretariat, spurred the developments to further institutionalise structures around the High Representative. The further development of the new office “implied an equally important amount of buy-in” (Duke, 2011: 36) of the member states, and was possible as the member states felt they had ‘ownership’ of the policy unit and Council Secretariat organisation. An early step was to make intelligence cooperation more structured and systematic. After the 9/11 attacks, several member states (France, Germany, Italy, the Netherlands, Spain, Sweden, and the UK) approached Solana with the idea of sharing sensitive information, and upgrading the Joint Situation Centre in the Council Secretariat to this effect (House of Lords, 2005; van Buuren, 2009).

³⁷ Interviews #3, #50.

Already in 1999, the UK had suggested introducing a standing committee of national representatives for CFSP matters in Brussels to replace the travelling political committee that had existed, with few changes, since the start of the EPC. The UK initiative not only aimed to promote a strong foreign policy, but to create a watchdog for the High Representative and to strengthen the intergovernmental foreign policy wing in relation to the growing importance of external economic policy instruments of the Commission (Juncos and Reynolds, 2007). Not least, the establishment of the PSC underlined the seriousness of the newly launched European Security and Defence Policy (ESDP), as it especially monitored and deliberated decisions in this field (Duke, 2005). France put forward the idea of installing the High Representative as a permanent chair for the PSC meetings; however, the idea was quickly dismissed, as member states were hesitant to diminish the role of the rotating Presidency in CFSP (Juncos and Reynolds, 2007). While the step would have further increased the standing of the High Representative, Solana was happy not to be bound to participate at ambassador meetings in Brussels twice a week (Dijkstra, 2011b).

Meanwhile, the network of EU special representatives (EUSRs), as well as of Solana's personal representatives, expanded. Special envoys for CFSP had already been deployed in the mid-90s. The Amsterdam Treaty codified the practice of sending special envoys to act in the name of CFSP, and assigned them the label EUSRs. The integration of the EUSRs in the new institutional structure of the Council after the Amsterdam treaty was not without frictions, and their usefulness was seriously questioned at the turn of the century (see Adebahr, 2011: 92–101). In the initial years, the EUSRs worked unaffected by the new post of High Representative, and under direct mandate of the rotating Presidency. However, as the above-mentioned development of the CFSP structures gained pace, they became more and more integrated into the Council Secretariat. The Council passed guidelines that placed the EUSRs under the authority of Solana,³⁸ and established a privileged link to the PSC as the primary point of contact (Grevi, 2007). In addition, the structures of the Council units and the EUSR were closer intertwined, with a Council official placed in every EUSR office and two senior contact points established in the policy unit (Adebahr, 2011). Nevertheless, even at the time of

³⁸ Who also received the right to propose candidates for nomination of a EU Special Representative.

adoption of the Lisbon Treaty, the integration of EUSR was weak, due to the institutional frailty and pending reforms of the Secretariat itself, and the physical location of the offices outside the main Council building (Adebahr, 2011).

While EUSRs (akin to the US special envoys) were a comprehensible concept for third parties, Solana's growing number of personal representatives rather risked confusing outsiders. On top of 12 EUSRs (in 2009), Solana directly appointed five personal representatives to oversee horizontal portfolios³⁹ and represent him when he was unavailable (Duke, 2011). According to Duke (2011), the informal arrangement of personal representation enhanced the effectiveness of the post of High Representative and increased the presence on the ground. Nevertheless, it also added to the inflationary representation of different EU actors from the Commission, Council Secretariat, rotating Presidency, and even the EP in third countries.

By mid-2000 a complex structure in the Council Secretariat had developed and was in need of simplification. In order to avoid a development of parallel structures, parts of the policy-unit officials had been integrated into DG for External and Political-Military Affairs (DG E) of the Council Secretariat (Duke and Vanhoonacker, 2006). However, the policy unit was still a separate entity according to the Treaties, and its high-profiled leader Helga Schmid made sure it maintained its strength. Another starting point for reform was the establishment of the Crisis Management and Planning Directorate (CMPD), which brought separate units of the Council Secretariat under one roof to streamline the planning of ESDP operations (Dijkstra, 2011b).

The general picture of EU foreign policy governance was, nevertheless, complex and messy. The creation of a CSFP administration outside of the Commission, and in the 'safe haven' of the intergovernmental Council, had triggered a significant increase in actors, resources and instruments around the office of an ambitious Javier Solana. In October 2009, more than 500 officials worked on foreign policy issues in the Council Secretariat (Juncos and Pomorska, 2010). Meanwhile, just across the street the Commission had increased its external-relation resources, given the growing

³⁹ Non-proliferation of Weapons of Mass Destruction, Human Rights in the area of CFSP, Counter-Terrorism Coordination, Energy and Foreign Policy.

importance of Commission-led portfolios such as Development Cooperation, Humanitarian Aid, or Trade. For the management of financial external assistance programmes alone, 3855 people worked for the Commission, of which two thirds worked in the network of over 120 Commission delegations (numbers from 2005, Spence, 2006). In addition, several reforms had been undertaken to consolidate the fragmentation of different DGs dealing with external relations within the Commission that strengthened the mainstreaming function of the DG for External Relations (DG Relex) (Spence, 2006). DG Relex became a strong bureaucratic actor just across the street from the Council, and increasingly voiced opinions and tabled initiatives in the field of the CFSP. After the EU-level administrative capacity inflated within the 10 years following the Maastricht Treaty, it was time to think about a complete overhaul of the EU foreign policy architecture.

4.2. The European Convention

The idea of a convention

The beginning of the new millennium was in general characterised by an ambition among European leaders to bring the European integration project, including its foreign policy, to the next level. The German foreign minister, Joschka Fischer, delivered a speech at the Humboldt University in Berlin in May 2000 (Fischer, 2000). On the EU's ability to act in the world, he acknowledged that the experience of the war in Kosovo triggered the decision of the member states in Cologne and Helsinki to establish a common defence policy. More ambitiously, he continued to argue for a 'Europäische Finalität', in the form of a European Federation with sovereign member states based on a common constitution. An avant-garde group of willing member states, a "Kerneuropa", was to go ahead and pioneer integration, "certainly in the Common Foreign and Security Policy" (Fischer, 2000: 49).

Jacques Chirac, President of France, argued in the same direction one month later in a speech to the German Bundestag (Chirac, 2000). However, Chirac stated that it was not in the German and French interest to have a "European Superstate" replace the nation states on the international stage. He claimed that a "strong Europe on the international stage needs solid institutions and efficient and legitimate decision-

making procedures, including majority decisions that reflect the weight of the member states” (Chirac, 2000). Chirac thus pleaded for a stronger and more efficient EU foreign policy alongside those of the member states, and added that the period after the Nice Summit should be used to reflect on a European Constitution, possibly within the scope of a convention.

Tony Blair, Prime Minister of Great Britain, delivered another big speech on Europe in October of that year (Blair, 2000). In it, he expressed a faith in the vitality of nation states in foreign policy that was even more pronounced than that of his French counterpart, and proclaimed that Europe should be “a superpower, but not a superstate”. Interestingly, Blair went into more depth on how institutions could be strengthened. The continuity of the policy machinery had to be improved by introducing elected chairs for various Council formations, and by strengthening the post of High Representative. He clearly expressed his devotion to a common foreign policy: “though nations will guard jealously their own national interests, there are times when it will be of clear benefit to all that Europe acts and speaks together”. However, rather than ending the debate on institutions with a single legally binding constitution, he argued for changes to the existing framework and a clearer delimitation of competences between the member states and the EU.

These three big speeches on Europe marked a start to the debate that led to the Laeken Declaration on the future of Europe by the heads of state and government in December 2001. The Laeken European Council called a Convention on the future of Europe in order to make proposals for starting points for discussions at the next intergovernmental conference (IGC) (European Council, 2001). Notably, the Convention was not tasked with developing a draft constitution. Considering the complexity of the institutional architecture of the EU, and the prospect of 10 members joining, the Laeken text included many questions for the members of the Convention to reflect on. For example, it included a question on how to ensure the synergy of the Commissioner for foreign relations and the High Representative. Nevertheless, the three big speeches at the turn of the century showed that there was yet no joint idea about how to design the future of the common EU foreign policy.

Ideal-type convention or an intergovernmental summit in disguise

The idea of the Convention was to escape the old methods of treaty revisions marked by summit diplomacy. Consequently, the design of the Convention was crafted to allow for more inclusiveness, transparency and deliberation. But was it set to be an ideal-type convention like the Philadelphia Convention that created the United States Constitution, or did national-based bargaining take over and transform the Convention into a proxy European summit akin to the Nice 2000 ‘night of the long knives’? To a large degree the design, aim and working method of the Convention goes back to the high ambitions of its president, Valéry Giscard d’Estaing (see also Norman, 2003). Giscard d’Estaing did not hide his ambition when he addressed the Convention plenary for the first time (Giscard d’Estaing, 2002). Comparing the Convention with the Messina Conference of 1955, he encouraged the delegates to set out on a path “towards a Constitution for Europe”. He claimed that a convention spirit should be established, and that delegates should not limit themselves to negotiate on behalf of their governments.

Moreover, the structure of the Convention reflected a wider, more inclusive approach. National representatives constituted a minority. In addition to representatives of the 15 member state governments, the Convention comprised two members of each national parliament, 16 members of the EP, as well as two representatives of the Commission. In light of the future enlargement, the 10 accession countries were represented with one government representative and two members of parliament, though without having the right to prevent consensus. The proceedings of the Convention were designed to allow for a discussion that was more distant from the daily routine of (often national-driven) politics. The Convention was divided into three phases: the listening phase, which was to allow for an open discussion and the build up of an *esprit de corps*, the study phase, in which members convened in specific WGs, and the drafting phase, in which the final articles were drafted in the plenary sessions.

However, the composition and proceedings of the Convention did not lead to a situation in which the member states’ national positions were neglected. On the one hand, an IGC of the member states still had to confirm a possible new Constitutional

treaty. On the other, bargaining on behalf of national positions replaced the deliberations in the spirit of a common constitution during the proceedings of the Convention. This was already reflected in the choice of delegates: for instance, only a few of the national representatives were academics, including Finnish delegate Teija Tiilikainen from Helsinki University and the initial German representative Peter Glotz from the University of St Gallen (Norman, 2003: 39). In addition, the high ambitions of Giscard d'Estaing did not go unnoticed in the national capitals. As soon as the member states realised that the Convention was doing more than just reflecting on some proposals to the heads of state and government, and were in fact designing a constitutional treaty, they stepped in and tried to give their position more weight in the Convention:⁴⁰ already in autumn, the German and French foreign ministers Joschka Fischer and Dominique de Villepin replaced their lower-ranked national delegates. The UK was well represented from the start by Europe minister Peter Hain, who lobbied intensively for the British position (Norman, 2003). Apart from the well-documented and transparent proceedings of the WGs and plenary sessions, the Convention was not free from backroom discussions and bilateral diplomacy (Norman, 2003). The member states, as the collective principal of the EU institutions, determined the final design of the High Representative of the Union.

External action in the Convention

Europe's ability to create a global profile turned out to be one of the major themes of the Convention. The WG on external action (WG VII) was the place for debates on the EU's international role. The mandate of the group included questions for the delegates on institutional aspects: How could the decision-making and coherence within EU foreign policy be improved? How could the post of High Representative be improved, and should it have more power and resources? How should the EU's representation be organised to exert more influence?⁴¹ The WG on external action used this mandate as a basis for intense debate on the different options of the future institutional design of EU foreign policy. This debate mirrored the dividing lines and controversies on the post of High Representative.

⁴⁰ Interview #40.

⁴¹ CONV 252/02

However, it was not only purely institutional questions that were regarded as decisive for the EU's international capability to act. The Convention also served as a platform from which to define the future role and purpose of the EU. Everts and Keohane (2003: 169) observed that "to the extent that the Convention was about clarifying the EU's purpose, it also held the prospect of increasing its attractive potential – its 'soft power'". The Convention thus also drew up a list of principles and objectives that common external policies should adhere to. In addition, the legal status of the EU in international affairs was subject to discussions in the WG on legal personality (WG III). The delegates agreed on granting the EU a single legal personality. This was supposed to clarify the Union's ability to conclude international agreements.⁴² Members of the Convention thus did not just focus on the development of the institutional framework of EU foreign policy. In the following section, however, the debate among delegates on the structure and processes of the institutional architecture will be in focus.

Identified deficiencies

The WG on external action identified deficiencies in the decision-making and representation of EU foreign policy. Members expressed worries about a lack of continuity. Solana came straight to the point in his intervention in the WG on external action: "foreign policy, in particular crisis management, is still based on personal relations and trust. This has to be built up through personal contacts; those cannot be switched every six months".⁴³ Delegates saw the rotating Presidency as a limitation to the international presence of the EU. However, internally the rotation was also seen as a problem. Continuity of the internal formulation of policies and interests would be hampered, as every member state holding the Presidency focused on its own priorities.⁴⁴ A change of the rotating Presidency system became thus part of the discussions of the Convention.

Many of the early input papers during the study phase of the Convention highlighted the need for the Union to be more coherent in its external action. The working document from the Finnish delegation was firm on this issue, and stated that

⁴² CONV 459/02.

⁴³ WD 8.

⁴⁴ CONV 252/02.

“[i]n the era of globalisation, the EU is powerful only if all aspects of its external relations – political as well as economic – are merged into a single coherent policy vis-à-vis the external world.”⁴⁵

A German working document referred to additional pressure to enhance external coherence in light of the upcoming enlargement of the Union: “[f]or this it is vital that the Union speaks with one voice to the outside world on external relations issues”.⁴⁶ Meanwhile, the division of the external relations into different pillars was a matter of concern, as expressed in the address of Commissioner for Development and Humanitarian aid Poul Nielsen:

“the present Pillar structure and the parallel existence of several entities representing the Union in various capacities and according to different procedures is simply not credible, not controllable, and not accountable.”⁴⁷

In general, members acknowledged that the division into different decision-making and organisational structures of the EU, as well as the growing number of member states, hampered the EU’s capability to represent a common policy. Institutionally, the “coexistence of two centres of gravity in European foreign policy”⁴⁸ particularly manifested this problem; namely the separate offices of the High Representative and the Relex Commissioner.

However, delegates believed that institutional improvements could only have limited effects without the political will of the member states. The input paper from the Romanian delegation pointed out that “[t]he institutional architecture and the procedural mechanisms, no matter how efficient would they be, cannot be a substitute for the lack of real political will of the member states”.⁴⁹ Nevertheless, some delegates believed that institutions can have a positive effect on the will of the member states to coordinate, and emphasised the “usefulness of mechanisms that foster convergence of views and a sense of solidarity”.⁵⁰ The lack of political will goes hand in hand with a lack of purpose, as argued by the report of the first meeting

⁴⁵ WD 19.

⁴⁶ WD 17.

⁴⁷ WD 9.

⁴⁸ WD 2.

⁴⁹ WD 11.

⁵⁰ CONV 459/02.

of the WG on external action. In order to have a common foreign and security policy, its added values, strategies and objectives had to be clarified first.⁵¹ For example, the instrument of common strategies – introduced via the Amsterdam treaty – was hardly used, and not working in the intended way.⁵²

The delegates also identified the EU's visibility in the world as insufficient. The rotating Council Presidency weakened the international profile insofar as the rotation interrupted the continuity of external representation. In addition, international crises required the EU to react instantly, and not with the rhythm of monthly foreign minister meetings. Visibility of the Union in international affairs would thus depend on a strong permanent representative of the Union to serve as interlocutor to the EU's partners around the world.⁵³ However, the EU's representation in multilateral fora was also in need of improvement.⁵⁴ Some members pointed out that a single and efficient representation in multilateral fora should be established, working in close cooperation with the delegations of the member states.⁵⁵

The assessments made during the listening and early study phase were fairly consistent across all delegations to the Convention. A successful EU foreign policy depended on overcoming the lack of continuity, coherence, political will, and visibility. However, the crucial and dividing question was how to achieve that end (see Appendix II). The institutional design of foreign policy actors at the EU level was an integral step to solving these deficiencies; but as a close observer of the Convention noted, "the future of the High Representative and the Commissioner for external affairs became a battlefield" (Norman, 2003: 141).

⁵¹ CONV 307/02.

⁵² WD 21 REV 1.

⁵³ WD 8.

⁵⁴ WD 18.

⁵⁵ WD 16.

4.3. Competing models for the High Representative

The ambitious model: a Commissioner for the CFSP

*“The High Representative must have part of his head and at least one leg in the Commission. But maybe he would prefer to have both!”
(Commissioner Poul Nielsen)⁵⁶*

A participant of the Convention described the initial atmosphere in 2002 as full of ambitions,⁵⁷ and suggested that it could best be described as a “constitutional moment”.⁵⁸ Inspired by Giscard d’Estaing, the initial feeling amongst participants was not to search for the lowest common denominator, but to use the opportunity to build a single-treaty framework. The ambitions with regard to organising the post of High Representative were high as well; however, models for the future High Representative varied from member state to member state. One crucial debate was focused on the question as to where the office of High Representative should be based in the institutional architecture. While integration-oriented countries preferred a transfer to the post to the Commission, other countries were rather in favour of opting for a High Representative that keeps his office in the Council (see Table 4.1).

Individual positions															
	AT	BE	DE	DK	ES	FR	FI	GB	GR	IT	IE	LU	NL	PT	SE
Position	+	+	(+)	-	-	(-)	+	-	+	(+)	(+)	+	+		-
Camps															
Commission			(Commission)				(Council)				Council				
AT, BE, FI, GR, LU, NL			DE, IT, IE				FR				DK, ES, GB, SE				

Note: “+” or “Commission” indicates that the member state was in favour of having the High Representative fully integrated in the Commission as a Commissioner for external relations. “(+)” or “(Commission)” indicates that the member state advocated full integration into the Commission in the long run, but not as part of the draft constitutional treaty. “(-)” or “(Council)” indicates that the member state preferred the High Representative to be based in the Council, though with the possibility of assigning the High Representative to a position in the Commission. “-” or “Council” indicates that the High Representative should remain in the Council as a separate post.

⁵⁶ WD 09

⁵⁷ Interview #40.

⁵⁸ See Ackerman (2000) for more on the term “constitutional moment”.

Table 4.1: Member states' positions on the organisational location of the High Representative (based on Appendix II)

A paper by the representative of the EP, Elmar Brok, drew attention to the organisational dilemma.⁵⁹ While the Commission is in charge of the representation of the integrated policies, the Council has its own executive structure to represent foreign and security-related policies. In order “to acquire the efficiency and consistency which is found, for instance, in the common trade policy”, the obvious choice for the EP was “for the tasks of the High Representative and the Commissioner for External Relations to be merged.”⁶⁰ The fully merged post would be known as the Commissioner for External Relations. The solution offered by the EP was the full organisational integration of the CFSP representative into the structures of the Commission. The Commission supported this view, and also recommended a gradual integration of the post of High Representative into the Commission structures (European Commission, 2002).

The EP was keen for this transfer of the highest CFSP office to take place for reasons of control and oversight over the Commission (for example on budget and staffing matters). Even some member state delegates, especially from smaller countries such as the Benelux states (Belgium, the Netherlands, and Luxembourg) and Finland, aimed for the ‘big jump’ and an integration of all foreign policy aspects into the Commission. As Finland’s delegate expressed in her input paper:

“The only rational solution to the problem is to make the Commission – that already successfully represents the EU in a remarkable part of its external relations – the representative for the entire external policy (except defence).”⁶¹

The Romanian representative argued in light of a long-term federal vision of the EU:

“Introducing the community method in the external action of the EU can be also a starting point towards an arrangement with more federal elements according to which the Commission is to become the EU’s

⁵⁹ WD 2.

⁶⁰ WD 2.

⁶¹ WD 19.

*Executive [...] and the Council is to be transformed into the European Senate.*⁶²

However, the member states were more cautious about giving CFSP competences to the Commission. The delegate from Austria was more conservative given the concerns of some member states, and argued for a gradual integration:

*“[A full merger] would be the best way to ensure the consistency of the Union’s external activities as a whole in the context of its external relations, security, economic and development policies. But we know that this option is not acceptable to all member states at the present time and can only be realised step-by-step in a long term perspective.”*⁶³

The Austrian assessment of the situation proved to be correct in the end. Member states, as we will see, could not agree on fully integrating an EU foreign minister into the Commission.

The intergovernmental model: a strengthened High Representative in the Council

The high ambitions to integrate foreign policy faded early, and an exchange of conflicting national positions on the design of the post of High Representative began. For some member states, it was vital that the post of High Representative remained anchored in the structure of the Council, and not integrated into the Commission. This view was expressed openly by the Danish, British and Spanish delegations. France also had concerns regarding this solution, but left it to Britain to play the ‘bad cop’.⁶⁴ On the one hand, these countries agreed that they needed strong EU institutions in the area of foreign policy. On the other, they believed that foreign and security policy can only be conducted under close control of the member states. In the plenary debate on foreign policy in July 2002, the British delegate, Hain, highlighted the need to have a clear link to the national parliaments:

“The strength of Europe’s foreign policy is based on its member states’ commitment, not on Community rules; and the legitimacy of Europe’s foreign policy must be based on its accountability to national parliaments. [...] We need strong institutional structures at Union level.

⁶² WD 11.

⁶³ WD 36.

⁶⁴ Interview #40.

But we must also recognise that this sort of collective effort requires tailor-made procedures and methods of operation and a clear link back to national parliaments.” (Hain, 2002)

The UK’s suggestion was to create a strengthened post of High Representative with better mechanisms of coordination with the external relations Commissioner, which should remain a separate post. Together with Spain, the UK explained its position in more detail in a joint paper towards the end of the Convention:

“Within the Council, the UK and Spain also propose the strengthening of the figure of the High Representative. He/she would become a real Minister of Foreign Affairs/External Representative of the Union who, inter alia, should chair the meetings of the Council of Ministers for External Relations and participate at the Commission’s meetings where proposals concerning the Union’s external action are to be discussed. He/she should also have at his/her own disposal a formal right of initiative for common foreign and security policy matters”⁶⁵

This suggested that the High Representative should be strengthened by being given a right of initiative, a role as chair of the foreign minister meetings, better resources, an observer status in the Commission College meetings, and more possibilities for joint actions with its Commissioner colleague.⁶⁶ From a PA perspective, this position reflects the preference of the principal to install tight control mechanisms. A High Representative based in the Council, supported by the policy unit staffed with seconded member state diplomats, would be under ongoing oversight by the national administrations. In contrast, a Commissioner for CFSP would possibly have been loyal to its colleagues and answerable to the EP. The UK and its partners were in favour of a High Representative with limited discretion, as they saw foreign policy as a matter deeply routed in the sovereignty and parliamentary control of the member states. France even proposed a strong oversight role of the European Council. The French proposal foresaw that the High Representative was answerable to the new post of a permanent European Council President.⁶⁷ As an agent of the European Council President, the High Representative would have been working as the foreign minister of the heads of state and government.

⁶⁵ CONV 591/03.

⁶⁶ See also CONV 459/02.

⁶⁷ WD 52.

Moreover, the political environment of the time was a key factor. The recent Iraq crisis showed that the member states were still divided with regard to their foreign policy and views on transatlantic relations. Against this backdrop a highly integrated foreign policy of the EU was perceived as rather ambitious. The Iraq crisis, during which Solana and Chris Patten (Commissioner for External Relations) were seemingly invisible, showed how much the policy representation of the EU was grounded in the legitimacy provided by the member states (Everts and Keohane, 2003). Jose Maria Aznar, who was heading the Spanish rotating Council Presidency at that time, recalled in a speech at Oxford that the primary task was to achieve greater convergence of member states' foreign policies: "a treaty in itself will not make a foreign and defence policy. Growing convergence of the member states' foreign policies is necessary." In reference to the terrorist attacks, he added, "it is a matter of strengthening co-ordination and co-operation among the member states against this threat" (Aznar, 2002). Aznar saw a strong common foreign policy as a matter of closer coordination, rather than integration. In short, the political argument for a High Representative embedded in the Council was that a policy area, which is subject to the sovereignty concerns of the member states, cannot effectively be represented or coordinated by a community institution.

The double-hatted compromise

"Regardless of the enormous achievements of Javier Solana, the High Representative in its current capacity cannot always punch above its weight. Similarly, regardless of all that Chris Patten has done to streamline the Union's external relations role, the Commissioner for External Relations will never be a partner to foreign governments if his clout stops where it should begin. Establishing a double-hatted Foreign Policy Chief for the European Union would enable us to have a genuine imprint on the world scene." (Bobby McDonagh, Delegate from the Irish government to the European Convention)⁶⁸

The two opposing camps developed a compromise quite early in the proceedings of the Convention. How could the High Representative stay embedded in the Council structure, while at the same time cooperating closely with the services in the Commission? The answer was to assign the posts of High Representative and

⁶⁸ WD 54.

Commissioner for external relations to the same person: thus, the double-hatted High Representative was born. The creation of a double hat was not a merger as suggested by the EP; legally, the two posts – Commissioner and High Representative – would stay separate and operate under either community or CFSP regulations.

The idea of combining the two posts was already developed before the Convention. A report by a French working group on the reform of the European institutions presented ideas on an EU government linking high offices in the Council and Commission as early as 1999 (Quermonne, 1999; Wessels, 2000). In a speech to the Assemblée Nationale in Paris in October 2001, German foreign minister Fischer shared some ideas about the duality of the two posts:

“Does it make sense to stick to the parallelism of the two posts? Wouldn’t a merger be better in order to improve the Union as an international actor? Wouldn’t it be an excellent addition to the national foreign policies, if we strengthen this arrangement? What practical steps can we take along this path in the medium term?” (Fischer, 2001a, author’s translation)

Thus, Fischer had already advocated a practical arrangement to improve the synergy of the two posts. The German representative Peter Glotz eventually introduced the concept of the ‘double hat’ in the name of the German government at the plenary meeting on EU foreign policy in July 2002 (Matl, 2003).⁶⁹ Instead of merging the two posts, the contribution stated that the function of the Vice-President of the Commission and the High Representative should be attributed to one person.

A German input paper went more into detail. Although, in the role of External Relations Commissioner, the High Representative would be part of the College of Commissioners, “the apparatuses would remain separate, also the different decision-making procedures for the different competences would remain unchanged”.⁷⁰ Germany took up the suggestions of UK and Spain and also argued for a strengthening of the post of High Representative, by incorporating the position of permanent chair of the foreign minister meetings on external action, as well as a right of initiative in matters of CFSP. The personal unification of the two posts would

⁶⁹ For reference, see also comments by Dr Gunter Pleuger (WD 11 in Working Group III on legal personality) as well as the report of the plenary session on 11 July (CONV 200/02).

⁷⁰ WD 17.

promote the visibility of the Union “below the level of the European Council”. The suggestions aimed to strike a balance: on the one hand they gave the member states a sense of power over the office as in matters of CFSP it would remain purely answerable and under the control of the member states. On the other hand, the member states deliberately granted the incumbent discretion, since, as a part of the College of Commissioners, the member states would have less control the incumbent’s activities.

The Franco/German paper on institutional questions, which represented a deal between the German Chancellor, Gerhard Schroeder, and French President Chirac, gave the double hat the final endorsement.⁷¹ The document in general secured the compromise on the institutional architecture towards the end of the Convention. It specified the nomination of the incumbent (qualified majority of the European Council and approval of the Commission President), as well as the idea of a service comprising units of the Council Secretariat and personnel of the Commission, which would work in close cooperation with the national foreign ministries. Meanwhile, smaller member states protested against the Franco-German proposal of a permanent President of the European Council. In their eyes, this post shifted the balance towards a more intergovernmental EU (Norman, 2003). In comparison, the double-hatted High Representative was generally seen as a reform that would ensure coherence between the EU’s external instruments, without integrating CFSP in the Commission. However, the practicality of this approach was questioned.

An impossible job?

The ‘double-hatted’ design of the High Representative was criticised. Revealingly, the office-holders of the two posts, Solana and Patten, argued against the impossible job description. Chris Patten pointed out that the incumbent of the two jobs will have an enormous workload, and argued in favour of establishing synergies between the two separate posts.⁷² Javier Solana was concerned with the additional complexity and disarray of responsibilities that a combination of the two posts would bring:

⁷¹ CONV 489/03.

⁷² CONV 342/02.

“We are only successful if the Council delegates responsibility clearly, and if effective internal co-ordination is assured. The Commission and High Representative have distinct responsibilities: merging these functions would, in my view, create more confusion than synergy. Chris and I have shown that close co-operation and partnership can, and do, produce results.” (WD 8)

It was a widely shared concern that the workload of the incumbent of the post would be almost impossible for one person to handle. In order to create the new centre of gravity, a long list of jobs for the High Representative had been accumulated. These included, in addition to the Commissioner’s and High Representative’s job, the chair of the external affairs Council formation, head of the new diplomatic service, and representation of the CFSP towards the EP. The German delegation, the co-inventors of the double hat, addressed these concerns:

“In order to ensure that the ‘double hat’ is able to perform his office effectively, he or she would have to be able to rely on an efficient substructure consisting of [...] two deputies – one for Commission affairs who could represent him or her and have the right to vote in the College in his or her absence (amendment of the Commission’s rules of procedure, if necessary), and one in his or her capacity as High Representative who could, in particular, represent the ‘double hat’ as chairman of the PSC, and in exceptional cases also in the General Affairs Council (External Relations). These deputies should be appointed by the ‘double hat’ and approved by the Council (by qualified majority) and by the Commission President.” (WD 17)

Germany wanted to create deputies for each of the two heads, who would obtain their political accountability via approval granted by the Council and the Commission President. While separate deputies were a possible solution to the heavy workload, the suggestion clearly shows the persisting duality of the post and of the legal frameworks of EU foreign policy. In the end, a system of deputies did not make it into the final-draft constitution. The delegates did not want to overload the text with detailed provisions, as that would have harmed its constitutional character and simplicity. The question of deputies was postponed for the implementation of the treaty.⁷³

⁷³ Interview #40.

Another matter of concern was the future relations of the double-hatted High Representative with the Commission. The British representative, Hain, was concerned about who would mediate a disagreement between the Commission and the Council.⁷⁴ Sweden felt that the double hat “would blur the lines between the Council and the Commission, while what we need is enhanced synergies between these two, clearly distinct, institutions”.⁷⁵ Finland voiced concerns about issues of accountability and the institutional balance of the EU. The new system made the institutional structure complex rather than simple, which was the initial task of the WG:

“How could this person – accountable for a part of his/her duties to the Council – take part in the collective policy formulation in the Commission and share the collective parliamentary responsibility for this policy? [...] A third risk is that of the gradual intergovernmentalisation of that part of external relations, which is currently successfully managed through the Community method. Last but not least, creating such a dual position would hardly correspond to the task of simplification of the EU’s political structures that the Convention is provided with.”⁷⁶

Concerns on the double-hat structure were not ironed out completely in the proceedings of the Convention, but were postponed to the subsequent IGC. At the end of 2003, the Italian Council Presidency, which presided over the IGC, circulated a questionnaire in order to allow member states to express their concerns.⁷⁷ The IGC mainly addressed the role of the High Representative in the Commissioners College and as the permanent chair in the Council (for a discussion of the IGC, see Grevi et al. 2005).⁷⁸ The IGC agreed that the High Representative would get full voting rights in the Commission College. The Commission President would only be able to ask for the resignation of the High Representative in the Commission in agreement with the European Council. Member states clearly spelled out the duality of the double hat by pronouncing that the High Representative is only bound by Commission procedures when carrying out Commission responsibilities. They also discussed the question of

⁷⁴ WD 66.

⁷⁵ WD 68.

⁷⁶ WD 19.

⁷⁷ CIG 6/03.

⁷⁸ CIG 2/03.

whether the High Representative should chair the Council formation on foreign affairs (see the following section). As Grevi et al. (2005: 67) observed,

“[T]he IGC was inevitably characterised by an intergovernmental backlash. Countries like the UK and, though much less openly, France worried that the new position might escape their rather comfortable control exercised on the activity of the High Representative.”

However, concerns regarding the workload and the additional complexity of the foreign policy set-up were not addressed. The deliberations of the IGC clarified, once again, the strict duality of the role of the High Representative: in CFSP the High Representative would act under the mandate of the Council; as Commissioner the same independence from the member states would be enjoyed as that granted to the other Commissioner.⁷⁹

4.4. Opportunities in the making and shaping of decisions

Decision-making in the CFSP

The design of the decision-making and decision-shaping procedures in EU foreign policy was another focus of the debates in the WG on external action. The procedures that stipulate how decisions are formulated and taken are a crucial factor in evaluating the discretion of the High Representative. While an organisational integration of EU foreign policy into the Commission structure was one of the options discussed, a full integration of the decision-making procedures was never tabled. No delegate suggested incorporating CFSP decisions under the same rules as in community matters, where decisions are initiated by the Commission and can often be taken by qualified majority. The delegates discussed in the WG on external action the notion that:

“external action covered a wide range of policy areas, that some areas were more subject to divergent national views than others, and that certain policy areas were more adapted to legal instruments and regulation than others. This required different arrangements and

⁷⁹ CIG 45/03.

procedures in EU decision-making and implementation. This was particularly true in relation to crisis management and defence issues.”⁸⁰

It was the shared view of the delegates that a one-size-fits-all approach could not be applied to EU foreign policy making. This was especially true for all questions of defence matters; here, all parties agreed that unanimity had to stay the rule. As Commissioner Nielsen put it:

“The only area where I still believe with some justification member states should maintain their national prerogatives is sending their sons and daughters into war. This in my view is such a sensitive issue that unanimity (and constructive abstention) could be defended.”⁸¹

Nevertheless, delegates discussed the idea of introducing more possibilities for QMV on foreign policy issues (see Table 4.2). Delegates that argued against QMV referred to the special nature of foreign policy as “a core issue to national sovereignty” and is “not an issue upon which one could vote”.⁸² Member states need to find consensus. On the other hand, proponents of QMV argued that the capacity of the EU to act could be increased. An enlarged Union would face “the risk of ‘CFSP inertia’”,⁸³ thus, qualified majority should be the general rule.⁸⁴ In his address to the WG, Patten hinted at the fact that the qualified majority approach had hardly ever led to a situation where member states were outvoted; rather, “the mere existence of the possibility of voting encouraged member states to try to arrive at a consensus”.⁸⁵ However, the British delegation voiced concerns that in the case of a decision reached by qualified majority, the internal disagreement among member states would be displayed to third countries, “thus rendering CFSP less effective”.⁸⁶

⁸⁰ WD 21.

⁸¹ WD 9.

⁸² CONV 307/02.

⁸³ CONV 307/02.

⁸⁴ WD 21.

⁸⁵ CONV 342/02.

⁸⁶ WD 40.

Individual positions															
	AT	BE	DE	DK	ES	FR	FI	GB	GR	IT	IE	LU	NL	PT	SE
Position	+	+	+	+	-	(+)	+	-	(+)	(+)	(+)	+	+	-	(-)
Camps															
QMV except defence				QMV with safeguards				QMV only as exception				No additional QMV			
AT, BE, DE, DK, FI, LU, NL				FR, GR, IT, IE				SE				ES, GB, PT			

Note: “+” or “QMV except defence” indicates that the member state was in favour of introducing QMV as the general rule for the CFSP except for defence matters. “(+)” or “QMV with safeguards” indicates that the member state advocated QMV as the general rule in CFSP matters, however with possibilities to prevent or prolong a vote when certain criteria are met. “(-)” or “QMV only as exception” indicates that the member state preferred unanimity to stay the rule and to introduce additional exceptions to which QMV applies. “-” or “No additional QMV” indicates that no further possibilities for QMV should be introduced in matters of foreign policy.

Table 4.2: Member states’ position on QMV (based on Appendix II)

The delegates continued to discuss other tools to allow for more flexible decision-making. How could coalitions of member states move ahead, if not all member states were on board? Delegates discussed the use of constructive abstention and enhanced cooperation. Under constructive abstention, a member state can abstain from voting without blocking the final decision. During the discussions, it was seen as important that the abstaining member state should be prevented from taking contradictory unilateral actions. In addition, enhanced cooperation was part of the discussion. Enhanced cooperation allows a group of member states to advance their cooperation using EU structures, and within the framework of the treaty, without forcing all member states to join. The system was already extended to CFSP in the Nice Treaty, but was never applied.

In the end, a qualified majority rule did not make it into the draft constitution, nor, subsequently, into the Lisbon Treaty. Although the Franco-German paper towards the end of the Convention recommended qualified majority,⁸⁷ the treaty texts listed unanimity as the rule. However, some exceptions were made: for example, a qualified majority was enough when decisions were made on the basis of an initiative of the High Representative following a specific request of the European Council, or

⁸⁷ CONV 489/03.

when deciding on a mandate for an EUSR. In any case, the member states could still prevent a vote if they stated vital reasons of national policy. If the High Representative could not broker a compromise, the Council could refer the issue to the European Council. A *passarelle* clause stated that the European Council could decide to introduce further options for QMV.

The qualified majority approach did effectively not make it into the new Treaty, especially majority voting on defence issues was completely ruled out. However, new rules for constructive abstention allowed for more flexibility at EU level. In addition, the model of enhanced cooperation was made applicable in CFSP and CSDP, though it required a unanimous decision to be set up (see Cremona, 2009). In defence, permanent structured cooperation was introduced as a possibility for a group of member states to go ahead and work more closely on common defence capabilities.

Changes in the decision-making rules were marginal. In general, the High Representative needed to seek a consensus of all member states in order to enforce policies. This characteristic of EU foreign policy hugely predefined the level of discretion of the High Representative. It would be difficult for the High Representative to follow a separate agenda, when consensus with all of the member states was required. Disagreement between a member state and the position of the High Representative would have effective control mechanisms and stop the High Representative from implementing or representing an unwanted position.

Right of initiative

Delegates in general agreed that the High Representative should receive a right to table policy initiatives in the Council (see Table 4.3). However, some delegates addressed open questions on how a right of initiative would be implemented. First, delegates felt that clarification was needed on how a High Representative's right of initiative could be reconciled with the Commission's right of initiative in community matters. Assessment was needed on whether the scope of the right of initiative should also touch on community matters in the hand of the Commission, such a trade or development. The possibility to table proposals in matters of CFSP was

uncontested among delegates, as this was seen as a major possibility to strengthen the office.⁸⁸ Moreover, delegates suggested also granting right of initiative in the area of Commission competences in order to promote coherence between the different external activities of the EU. Solana argued for a comprehensive right of initiative, especial with regard to crisis-management:

*“Any such proposals, especially in the framework of crisis management, should encompass the possibility and capability to mobilise the whole spectrum of instruments at the disposal of the Community and of the member states: from humanitarian aid to police; from electoral observation to military assets.”*⁸⁹

Commissioner Nielsen even suggested extending the right of initiative to internal community policies that have external effects:

*“[...] this initiative must be able to call on all external elements of our policies, be it trade, agriculture, industrial policy, research, health, and the social policy, which are part of the so-called first pillar of the European Community.”*⁹⁰

Nielsen wanted to create a “centre of gravity which is in control of the policy initiative”.⁹¹ However, a right to make initiatives in various areas of Commission competence raised concerns with regard to the standing of the High Representative in the College of Commissioners. In practice, the foreign policy chief would need an elevated position in the College, which was usually characterised by the equality of its members. Furthermore, the established procedure in the College was to decide on policy initiatives in consensus. As a member of the Commission, should the new High Representative have the possibility to table proposals without support from colleagues? The strict duality of the double hat once more provided an answer to these questions. The suggestion of the delegates was that the High Representative would be able to table initiatives without prior approval from the College of Commissioners only in the area of the CFSP.⁹² In other areas of external action,

⁸⁸ See, for example, WD 11, WD 17, WD 36, CONV 459/02.

⁸⁹ WD 8

⁹⁰ WD 9.

⁹¹ WD 9.

⁹² CONV 459/02.

however, the High Representative would need to table a joint initiative together with the Commission.

Individual positions															
	AT	BE	DE	DK	ES	FR	FI	GB	GR	IT	IE	LU	NL	PT	SE
Position	+	+	+	+	+	+	(+)	+		(+)	+	+	+		(-)
Camps															
Right of initiative CFSP				With Commission				Commission				No right of initiative			
AT, BE, DE, DK, ES, FR, GB, IE, LU, NL				FI, IT				SE							

Note: “+” or “Right of initiative CFSP” indicates that the member state was in favour of granting the High Representative a right of initiative in CFSP, which can be exercised without involvement of Commission. “(+)” or “With Commission” indicates that the member state advocated a right of initiative for the High Representative which can be exercised only together with the Commission. “(-)” or “Commission” indicates that the member state preferred to keep the right of initiative in CFSP matters with the Commission. “-” or “No right of initiative” indicates that neither the High nor the Commission should have a right of initiative in CFSP matters.

Table 4.3: Member states’ positions on right of initiative in CFSP (based on Appendix II)

The Irish and Finnish delegates were concerned about the idea that the right of initiative, as well as the chairing of foreign ministers meetings, were to be assigned to the High Representative. The possibility of the High Representative to table an initiative and chair the subsequent deliberations would represent an unusual concentration of tasks and power. Furthermore, it could lead to a conflict of roles.⁹³ Nevertheless, the Finnish and Irish delegates did not question the right of proposal of the High Representative. They wanted the job of chairing the Council to remain with the rotating Presidency, not least in order to keep the prestigious and influential role in the hands of their foreign ministers.

Chairing

The introduction of permanent presidencies in the Council was a matter of concern for small and medium-sized member states such as Finland, Sweden and Ireland. For these countries, the rotating Presidency represented a chance to upload their priorities on the EU agenda and boost their international profile (see Table 4.4). The rotating Presidency was an illustration of equality among member states, despite the differing

⁹³ WD 54, WD 61.

levels of resources and capabilities (Finnish Ministerial Committee for EU-Affairs, 2003). Meanwhile, Finland and Ireland were of the opinion that the concentration of competences of the High Representative, which included a right of initiative, the chairing of the decision-making body, as well as the implementation of CFSP policies, was unusual for a balanced political system. The community method should serve as an example for the organisation of CFSP, where the Commission plays the role of an executive, while the rotating Presidency heads the Council as the legislative body. In addition, the rotating Council Presidency was a source of legitimacy for the High Representative and functioned as a bridge between the member states and the foreign policy chief.⁹⁴ This group of countries also saw the need for more continuity of the agenda-management of the EU foreign policy. However, they argued for a strengthening of the team presidencies and joint Presidency programs as a means to establish longer planning horizons (EUCON, 2003).

Individual positions															
	AT	BE	DE	DK	ES	FR	FI	GB	GR	IT	IE	LU	NL	PT	SE
Position	+	+	+	-/+	+	+	-	+		+	-	+	+		-
Camps															
External relations chair												No chairing			
AT, BE, DE, ES, FR, GB, IT, LU, NL												FI, IE, SE			

Note: “+” or “External relations chair” indicates that the member state was in favour of giving the chair of the foreign affairs minister meetings to the High Representative. “-” or “No chairing” indicates that the High Representative should not be the permanent chair of a Council formation.

Table 4.4: Member states’ positions on chairing in the Council (based on Appendix II)

Nevertheless, the smaller member states did not form a united front on the issue. The Benelux countries preferred an extended role of the Commission in the Council to the effect that the Commission should chair the general affairs formation and the HR/VP of the Commission should chair the foreign affairs formation (Benelux, 2002). All of the bigger member states were in favour of introducing a permanent chairmanship in the area of foreign affairs. With Javier Solana, they had a prominent advocate of the idea:

⁹⁴ see WD 16.

*“A permanent Chair for the External Relations Council is necessary. [Better representation and policy initiation] could be achieved if – as many have proposed – the High Representative were to be designated as this permanent chair. It would greatly simplify external representation practices, and it would inevitably imply a right of initiative or proposal, alongside the prerogative of organising and steering the Council’s work. Furthermore, it would de facto (if not de jure) ensure better planning and more consistent preparation of policy initiatives, including mobilisation of member states’ and Commission’s assets and resources.”*⁹⁵

A majority of member states strongly supported the High Representative of the Union as the permanent chair of the foreign minister meetings, and included the provision in the draft constitution and in the Lisbon Treaty. In addition, the permanent chair should preside over a dedicated Foreign Affairs Council formation that would deal exclusively with external relations. The reform of the Council formations already started with the Seville European Council, which cut the number of formations from 16 to nine (European Council, 2002). However, the drivers of that time, Spanish Council President Aznar and Secretary of the Council Solana, failed to convince smaller member states to split external affairs from the general affairs Council formation (Powell, 2002). The Seville European Council could only agree that general and foreign affairs would be dealt with at separate meetings with separate agendas. However, in the Convention, the introduction of a separate Foreign Affairs Council was broadly supported. The change seemed necessary in light of the overall package of institutional reforms, and member states shared the perception that the efficiency of the Council’s work had to be improved (Norman, 2003).

Conclusion

At the heart of the European Convention was the question of how to improve the efficiency and visibility of Europe’s foreign policy project. Many of the interventions during the proceedings aimed at institutional solutions to better organise collective behaviour of the member states. In accordance with the PA literature, the member states designed an EU-level agent that would take over the implementation of common tasks. However, the design of the High Representative of the Union cannot only be seen as a well-crafted invention following only functional considerations of

⁹⁵ WD 8.

the delegates. The European Convention, despite having different initial aspirations, became a place at which delegates deliberated on the basis of national positions on the future institutional architecture of the Union. The ‘multi-hat’ of the High Representative was a typical compromise among EU member states with different preferences on the institutional architecture. The question was not whether the High Representative should be strengthened, but how. The member states disagreed on the question of how to apply the community method, or the intergovernmental method to the office of the new EU foreign policy chief.

The different models of the member states concerning the post did not lead to a lowest common denominator design. On the contrary, in order to meet the sovereignty- and efficiency concerns of the member states, the post was equipped with competences in the CFSP, as well as in the Commission’s external relations, while member states stressed that both spheres would retain their distinct character and decision-making framework.

Hence, the compromise pleased all member states to a certain extent. Member states that were rather sceptical about losing sovereignty to the EU level pointed out that political decision-making was kept separate and under full control of the member states. The integrationist member states could point to the fact that EU foreign policy was more efficiently organised with a centre of gravity for its decision-making. The new set-up comprised strong elements of member states’ control, as the continuity of the intergovernmental CFSP set-up allowed member states to veto, and thus sanction, deviant behaviour of the High Representative. Member states also ensured that the double posting of the office-holder as Commission Vice-President would not entail a transfer of competences to the EU level, or even give the Commission the chance to become one of multiple principals of the High Representative. The Lisbon Treaty states that, with respect to the responsibilities as Vice-President of the Commission only, the “High Representative shall be bound by Commission procedures” to the extent that this is consistent with his duties in CFSP matters and as Foreign Affairs Council chair.⁹⁶ Two declarations within the Lisbon Treaty (13 and 14) highlight the fact that the creation of the High Representative and the EEAS would not affect the

⁹⁶ Art. 18 (4) TEU.

responsibilities, power and legal basis of member states in relation to their conduct regarding foreign policy and diplomatic bilateral and multilateral relations.

However, the arrangement opened up the possibility for agent competition between the High Representative and the Commission. As Piris (2010: 248) noted,

“[T]he treaty gives the High Representative a co-ordinating role in the Commission (Art 18(4) TEU), but it does not give him/her, ipso facto, the legal power to impose his/her decisions on his/her colleagues in the College. Moreover, the President of the Commission might also wish to play a leading role in co-ordinating the external policies of the College.”

The Lisbon Treaty thus built a potential tension into the relationship with the High Representative’s colleagues in the Commission, as it did not equip the High Representative with the necessary hierarchical competences with which to fulfil the coordinating role.

The compromise fulfilled the important function of keeping all member states attached to the aim of further developing Europe’s foreign policy architecture. However, it cannot be evaluated on the basis of the Treaty articles alone, if the new powers of the post of High Representative also implied that the incumbent would gain discretion to shape EU foreign policy. The following chapters will look more closely at the processes and interactions between the High Representative, the member states, and the Commission in particular cases.

5. Creating the EEAS: how and why member states lost control

“My legacy will be the setup of the EEAS,” was the response of Catherine Ashton at a conference in Brussels in early 2013, when she was asked what she would be remembered for (Ashton, 2013a). Undoubtedly, the creation of the new service was one of the greatest achievements during her term. Brokering a deal in the face of fundamentally different interests of the member states, the Commission and the EP within less than a year was a remarkable achievement. However the question remains as to the extent of discretion the High Representative, who formally proposed the basic organisation and functioning of the service, had over its design.

This chapter suggests that in the process of setting up the EEAS, the member states lost control over its final design. The process leading up to the decision on the EEAS was characterised partly by conflicting preferences of member states on the organisation and scope of the service. Furthermore, the member states had limited possibility to oversee the complex planning processes and thus to control the proposed architecture of the service that was developed by the High Representative in cooperation with the Commission. As a consequence, the High Representative had unintended discretion over the design of the EEAS in some instances. This chapter suggests that a crucial factor in explaining how and why member states lost control over the set-up of the EEAS was the cooperation between the High Representative and the Commission in drafting the building blocks of the service. In the context of the ambitious timeframe of the process, the member states had difficulties realising their preferences in the set-up. Despite the EP’s claim of having had a major influence on the structure of the EEAS, it is shown that its influence has been rather marginal when it comes to the general design and functioning of the service.

5.1. Member states' groundwork

The service in the Convention

The EEAS – just like the post of High Representative – has its basis in the Convention on the future of Europe. The creation of a service dedicated to the management of the EU's external activities directly followed from the logic of the post of the double-hatted High Representative. If a foreign policy chief were to be tasked with various aspects of agenda-management, as well as representational tasks, the available resources at the chief's disposal should be adequate. In addition, the idea at the time was to put an end to the growth of parallel foreign policy structures in the Commission and in the Council Secretariat.

Needless to say, the members of the European Convention in favour of keeping the posts of High Representative and Relex Commissioner separate saw only limited possibilities for a joint administrative body. Only a joint press service or a joint strategic unit could, for example, help to improve the synergies of two separate posts.⁹⁷ But even the proponents of the double hat, such as Germany, did not have a clear vision of the EEAS at the start. For example, the German delegation outlined a divided structure for the High Representative: it should be assisted by DG Relex in its role as Vice-President of the Commission, and by a consolidated 'European Foreign Policy Unit' that combined the foreign policy desks of the Council Secretariat and also comprised seconded national diplomats. Only a joint cabinet should ensure "the practical coordination of the two substructures".⁹⁸

However, such a minimalistic version did not seem to be a solution to inefficiencies of the duplicated representational system itself. While at that time the Commission had 123 delegations around the world, its portfolio did not extend to political and diplomatic tasks within the CFSP. Meanwhile, the Council had already established two liaison offices in New York and Geneva next to the Commission delegations, in order to ensure continuity of the Council's work within the UN. The delegates at the Convention thus aimed to eliminate duplications, which had grown in and outside

⁹⁷ CONV 340/02.

⁹⁸ WD 17.

Brussels. Having different people working on the same issues just across Schuman roundabout did not seem effective. The final paper of the WG on external relations stated that a “large consensus” emerged on the idea of an EEAS.⁹⁹ Under the authority of the High Representative, the service should comprise staff from the Commission and the Council Secretariat, as well as seconded national diplomats. Commission delegations would become EU delegations, and would be answerable either to the Commission (on its portfolios) or to the High Representative (on CFSP). The Franco-German paper on institutions gave the final endorsement to this idea, reiterating the position of the working group.¹⁰⁰ It was agreed that a common service would be built based on the resources of the Commission and Council Secretariat, in support of the High Representative and with delegations around the world. Consensus at this point suggested that the architects of the EEAS did not anticipate how difficult its creation would be.

First consultations on the service

The basic elements of setting up the EEAS were enshrined in the Constitutional and Lisbon Treaties: a service would be created to assist the High Representative, and would comprise staff from the Commission, Council Secretariat and seconded member state officials. The member states delegated the task of answering the detailed questions regarding the structure, as well as scope, of the service to the High Representative. The High Representative had to table a proposal for a Council decision, which also needed the consent of the Commission. In addition, the EP had to be consulted.¹⁰¹

Judged only on this treaty basis, the mandate to the High Representative was short on details and deliberately granted discretion to the High Representative over the design of the EEAS. However, the treaty basis does not tell the whole story on the EEAS mandate: the member states, together with the EU-level actors, started to work on the

⁹⁹ See CONV 459/02. Some of the member states also voiced their concerns. The creation of EU delegations, which, in contrast to the Commission delegations, would also represent and coordinate EU positions on political aspects of foreign policy, was seen by some members as a strong and premature move, considering that the new foreign service still had to be built from scratch. It was also highlighted that the diplomatic service would have to rely strongly on cooperation with the member states’ delegations on the ground (WD 21 REV 1).

¹⁰⁰ CONV 489/03.

¹⁰¹ See Art. 27(3) TEU.

EEAS decision long before the Lisbon High Representative came into being. They started to outline more than the basic structure, and went into details on the mandate of the High Representative. The first planning and consultations started in late 2004. Still anticipating ratification of the Constitutional treaty, the December European Council tasked Commission President Barroso and High Representative Solana to undertake a first stocktaking exercise of the member states' positions on the EEAS in order to propel planning for the service.¹⁰²

Two points were controversial at that time. First, the organisational positioning of the new service was not clear. The member states had already intensively discussed the positioning of the post of High Representative during the Convention on the future of Europe, and dismissed the idea of integrating the role into the Commission (see Chapter 4). However, the EEAS could theoretically be placed in either of the two bodies (Commission or Council), or could remain separate. The EP started lobbying for an ambitious solution: the "EEAS should be incorporated, in organisational and budgetary terms, in the Commission's staff structure" (European Parliament, 2005). The member states disagreed, and arrived at a broad consensus that the service should have a *sui generis* character, meaning that it should not be a new institution, "but a service under the authority of the Foreign Minister, with close links to both the Council and the Commission".¹⁰³

Second, the scope of the service was wide open. A "minimalist version" (Duke, 2009) would comprise only a small service that would mainly be in charge of CFSP/CSDP. The Policy Unit and DG E from the Council Secretariat would constitute the biggest part of the service, together with the policy unit from the Commission's DG Relex. As Duke (2009) suggests, this version was subject to doubts about whether the manpower of the service was enough to support all functions of the High Representative. However, this small shuffling of posts would have eliminated the risk of major competition between the Commission and the EEAS about external action competences. A "maximalist version" (Duke, 2009) was

¹⁰² In a joint effort, the Presidency, the Commission and the Council Secretariat held bilateral meetings with all 25 member states and the two soon-to-be-newcomers Bulgaria and Romania. The EEAS was also on the agenda of Coreper in March and May 2005 (9956/05).

¹⁰³ 9956/05.

to move a broad spectrum of the foreign policy portfolio to the EEAS, including the DGs of the Commission, which deal with development cooperation, enlargement and the neighbourhood. Only trade, as an exclusive competence of the Union, as well as humanitarian aid, would have stayed in the Commission. The 2005 report concluded that a broad approach was necessary in order to avoid duplications, and the most likely solution would be somewhere in the middle between the minimalist and the maximalist version.¹⁰⁴

The preparatory work from 2005 further defined the mandate of the High Representative with regard to the creation of the service. The member states successfully aggregated their preferences on two points. First, it was clearly stated that the EEAS should have a *sui generis* character, and hence be outside the Commission. Second, the member states – although not clear about the details – stated that they were in favour of a broad EEAS portfolio. With this more detailed definition for the creation of the service, the High Representative did not necessarily lose discretion over its design. On the contrary, a *sui generis* and comprehensive service gave the High Representative more options with which to design the new structures. However, it also posed the question of how the High Representative would interact with the Commission and its overlapping competences in development aid, neighbourhood, and enlargement, as well as humanitarian aid. Would the interaction between these EU level agents be marked by competition or cooperation?

All progress stalled in summer 2005. The negative referendums in France and the Netherlands halted the debate, and preparation remained stalled for years to come. A senior official recalled that “people could not be seen working on the EEAS before the Lisbon Treaty was ratified in all member states”.¹⁰⁵

The Swedish Presidency

Only the final ratification of the Lisbon Treaty spurred preparations for the set-up of the EEAS. During the Swedish Council Presidency of late 2009, the EEAS was back on the agenda. Catherine Ashton was only nominated at the end of 2009 and thus

¹⁰⁴ 9956/05.

¹⁰⁵ Interview #46.

could not influence the initial preparations. The basic scope and structure of the service was designed without the High Representative's input. The member states, the Commission and the EP did not wait until the day of the nomination of the High Representative to start working on the EEAS design.

The main document that manifested these efforts is the report of the Swedish Presidency to the October 2009 European Council.¹⁰⁶ It presented the results of preparatory work by the Presidency, together with the other member states, the Commission and the Council Secretariat.¹⁰⁷ The Swedish Presidency was seen as a success with regard to the EEAS preparations (Murdoch, 2011). While the positioning and the scope of the service had not been entirely determined after the 2005 consultations, the Swedish Presidency made progress on both issues. The service should be a "service of a *sui generis* nature separate from the Commission and the Council Secretariat",¹⁰⁸ with autonomy over its budget and staffing, and with the High Representative in charge.

With respect to the scope of the service, the Swedish report foresaw that development cooperation, trade, as well as enlargement, should stay within the Commission.¹⁰⁹ However, single geographic and thematic desks were to be created in the EEAS and concentrate the resources in the Commission and the Council Secretariat.¹¹⁰ Regarding the controversial transfer of crisis-management structures to the EEAS, the report suggested that they should be included in the hierarchy of the new service. However, the member states had become more cautious about the incremental integration of these core aspects of national sovereignty after the shock of the negative constitutional referenda. Hence, when deciding on the Lisbon Treaty they included a declaration specifying that the provisions of the treaty on the CFSP would not have an impact on the formulation and the international relations of the member states' foreign policies, and would not enhance the competences of the

¹⁰⁶ Presidency report to the European Council on the European External Action Service, 14930/09, available at: <http://register.consilium.europa.eu/pdf/en/09/st14/st14930.en09.pdf>. Referred to hereafter as the Swedish Presidency report.

¹⁰⁷ Indent 2, Swedish Presidency report.

¹⁰⁸ Indent 16, Swedish Presidency report.

¹⁰⁹ Indent 5, 6, Swedish Presidency report.

¹¹⁰ Indent 4, Swedish Presidency report.

Commission or the EP.¹¹¹ Acknowledging these concerns of the member states, the Swedish report made it clear that the CSDP structures in the EEAS should be placed under the direct authority of the High Representative.¹¹²

As a consequence of having a separate institutional structure for the service, and given that some of the portfolios would remain within the Commission, a clear need arose to carefully consider the issue of coordination between the EEAS and the Commission in these policy fields. In terms of the financial instruments (such as neighbourhood and development policy), “the EEAS (single geographic desks) should play a leading role in the strategic decision-making”.¹¹³ However, it remained open as to exactly where the programming chain would be cut, and where the Commission would take charge of the implementation of the instruments.¹¹⁴ In general, it was agreed that there should be close cooperation between the High Representative and the Commissioner responsible for the programming, including jointly prepared decisions.¹¹⁵ Apart from the programming of the external instruments, the Swedish document highlighted that the EEAS services and the Commission services for external responsibilities *and* for internal responsibilities with significant external implications should establish effective consultation procedures.¹¹⁶

The work of the Swedish Presidency of 2009 had a positive effect on the member states’ capability to aggregate their preferences. With the Lisbon Treaty not yet in place, the member states and, in particular, the rotating Presidency were in full control of the process and had no immediate deadline to meet. The Swedish Presidency succeeded in ensuring an agreement on basic points of the EEAS design. By further defining the organisation of the EEAS, any risk of unintended discretion for the High Representative over the set-up of the service was limited. However, more importantly, the member states agreed that the High Representative, supported by the EEAS, should have competences in coordinating a wide range of external

¹¹¹ Declaration 14 to the Lisbon Treaty.

¹¹² Indent 7, Swedish Presidency report.

¹¹³ Indent 9, Swedish Presidency report.

¹¹⁴ Indent 9, Swedish Presidency report.

¹¹⁵ Indent 10, Swedish Presidency report.

¹¹⁶ Indent 13, Swedish Presidency report.

activities of the EU. This set the stage for intense negotiations between the High Representative and the Commission on how to delimitate the competences of their administrations.

The EP's vision of the service differed from that of the member states. In October 2009, the EP issued the so-called "Brok report" on the institutional functioning of the EEAS.¹¹⁷ The main point expressed in the parliament's position was again to incorporate the EEAS in the Commission's administrative structure. In general, the EP wanted to prevent the Community-based aspects of EU's external action from moving under the umbrella of the EEAS, and thus away from the control of the Parliament. DGs dealing with issues such as trade, enlargement and development, as well as externally oriented units of the DG for Economic and Financial Affairs were to be administrated under a specific model that allowed them to retain their integrity. While the EP's preferences before the Lisbon Treaty came into force were not in line with those of the member states, it remained to be seen as to which position the new High Representative and Commission would take.

5.2. Cooperation between the Commission and the High Representative

The nomination of Ashton and her portfolio

After Catherine Ashton was nominated as the first High Representative of the Union under Lisbon rules in December 2009, the path on which the EEAS should develop, and the main scope of the service, seemed to be mostly set. However, the member states had yet to face tough negotiations with the Commission. Up to that point, the member states were in control of the set-up of the office of the High Representative. After the Lisbon Treaty came into force, the interaction of the High Representative with the Commission had unintended effects on the discretion of the new agent. It turned out that, despite overlapping competences, the High Representative and the Commission President were in agreement on the shape of the new service; however, their preferences did not match the views of the member states.

¹¹⁷ European Parliament, Report on the institutional aspects of setting up the European External Action Service, 2009/2133(INI), available at <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2009-0041&language=EN>. Referred to hereafter as European Parliament 2009 report.

At first sight, it is surprising that the High Representative and the Commission President would agree on the organisation of the EEAS and its relations towards the Commission. Bureaucratic tension is inbuilt within the institutional set-up of the two posts (Erkelens and Blockmans, 2012). On the one hand, the President of the Commission has a *primus inter pares* position in the College as due to being able to “reshuffle the allocation of [...] responsibilities during the Commission’s term of office”, while other Commissioners should “carry out the duties devolved upon them by the President under his authority”.¹¹⁸ On the other hand, the High Representative is also provided with an enhanced position within the College of Commissioners on the basis of the Treaty, due to a responsibility to coordinate the external relations portfolios within the Commission.¹¹⁹ This is a clear sign of overlapping competences, and raises the question of who is in charge of coordinating Commission activities in the field of external relations.

However, instead of competition between the two actors, a pattern of cooperation developed that featured strong leadership by Commission President Barroso. One reason for this was the beneficial position of the Commission President at the start of the term, which set the tone for further cooperation. The Commission President was the first nomination settled by the European Council in December 2009. The Treaty stipulates that the President of the Commission has to give consent to the designation of the High Representative.¹²⁰ However, Barroso played an even more defining role than the Treaty would formally suggest. The fact that Catherine Ashton became High Representative of the Union, after David Miliband refused the job, goes back to a proposal by Barroso, who arguably saw his chance to install a Vice-President with less political clout and standing (Barber, 2010; Howorth, 2011). Thus, Barroso was the ‘Queenmaker’.

In a second step, Barroso used his competence to define the Commissioner portfolios to pave the way for future cooperation with the High Representative. He had the right to nominate his team and define their portfolios inter alia by sending out mission

¹¹⁸ Art. 248 TEU.

¹¹⁹ Art. 18 (4) TEU.

¹²⁰ Art. 18(1) TEU.

letters to his College of Commissioners.¹²¹ Instead of giving the neighbourhood portfolio to the HR/VP, he assigned this responsibility to Štefan Füle, who became Commissioner for Enlargement and Neighbourhood policy. In his mission letter, Barroso argued for a division of labour between the two posts, but also synergies “which could be offered by close cooperation between you [Štefan Füle] and the High Representative/Vice-President”.¹²² However, many commentators saw this as a pre-emptive strike to diminish the power of the EEAS and the High Representative, and retain the Commission’s power over the heavy neighbourhood portfolio (see, for example, Behr et al., 2010).

High Representative Ashton, facing criticism in her nomination hearing in the EP for abandoning the neighbourhood, contradicted an interpretation that would see her in competition with the Commission President:

“I worked together with the President of the Commission on the proposals that he has put forward. [...] When you have the role that I have [...] that covers a huge amount of the landscape, [...] we have to be very clear about how we implement the policies that we have. Therefore, what we have done within the cluster of Commissioners that work with me, we have designated particular responsibilities. [...] Having a Commissioner who is working with me in order to support this strategy means that we will develop an expertise in the neighbourhood in a way that – with all the responsibilities I have – I simply could not do.”¹²³

Here, it became obvious that the High Representative and the Commission President were ‘partners in crime’, much to the displeasure of the member states. In February 2010, staff involved in the international climate change negotiation and the energy task-force were transferred from DG Relex to the Climate Action DG, and DG Energy. Consequently, they were no longer part of the to-be-established EEAS. While the Commission argued that the staff were necessary to the functioning of the DGs, the member states were frustrated: “member states’ diplomats said that the

¹²¹ Mission letters from President Barroso to the Commissioners designate, available at http://ec.europa.eu/commission_2010-2014/mission_letters/index_en.htm.

¹²² Mission letter from President Barroso to the Commissioner designate for Enlargement and Neighbourhood policy, Štefan Füle, available at http://ec.europa.eu/commission_2010-2014/mission_letters/pdf/fule_enlargement_and_neighbourhood_policy_en.pdf

¹²³ Transcript of a video recording of the hearings of Vice-President designate Mrs Catherine Ashton at the Foreign Affairs Committee of the European Parliament on 11 January 2010, <http://www.europarl.europa.eu/ep-live/de/other-events/video?event=20100111-1531-SPECIAL>.

move was made to insulate the units from the pull of the EEAS. They believed that the EEAS needs staff dealing with the external dimensions of internal policies” (Vogel, 2010). The member states had a different, more comprehensive, understanding of the EEAS, which was not in line with that of the Commission President and High Representative. However, the two EU-level agents agreed, and closely cooperated in the following set-up of the EEAS; they were thus able to gain unintended discretion.

The Relex group of Commissioners

The degree to which the High Representative accepted, or at least gave way to, the Commission President’s reading of the Lisbon Treaty was far-reaching. For example, Barroso used his power as President to protect the Commission’s influence over the external Commission portfolios, even though the job of coordinating the Commission’s international activities was given to the High Representative as Vice-President of the Commission.¹²⁴ In a note sent on 22 April 2010, Barroso informed Commissioners on the composition of groups of Commissioners (Erkelens and Blockmans, 2012). Catherine Ashton was put in charge of the Relex group.¹²⁵ On paper, being in charge of this external group of Commissioners put the High Representative in a position to fulfil a coordinating role in the Commission. However, the note to the Commissioners also included important powers for the Commission President and its administration:

- *“Each group will work on the basis of a mandate from the President setting out the purpose of the group and the product(s) to be delivered.*
- *The President’s Cabinet and SG will participate in all groups. The Cabinet/Service of the lead Commissioner will prepare papers for discussion in the groups. Meeting reports, agendas and organisation will be done by the SG.*

¹²⁴ Art. 18 (4) TEU.

¹²⁵ Füle (enlargement and neighbourhood), Piebalgs (development cooperation) and Georgieva (humanitarian aid), also De Gucht (trade) and Rehn (economic and monetary affairs).

- *The President can decide to attend any meeting, which he will then chair.*
- *These groups will not take decisions but one of their tasks will be to prepare for collegiate discussion/decision.” (Erkelens and Blockmans, 2012)*

The Commission President and the Commission Secretariat thus kept important prerogatives and effectively had power over the agenda, as well as the chair. The group was also stripped of its power, as it could not take any decisions on its own but needed to refer to the College of Commissioners. Even though this note also applied to the other groups of Commissioners, the fact that it was applicable to the Relex group is a special case, as it directly touched on the High Representative’s right to coordinate external Commission portfolios.

Catherine Ashton lost authority in the bureaucratic tension that arose with the Commission President, which itself was a consequence of the ambiguity of the Lisbon Treaty. However, legal commentators were of the opinion that the treaty was fairly clear on who should have the power to coordinate. While the Commission President had the overall power to structure the Commission and the division of portfolios within it, he had to take into account the High Representative’s responsibility to coordinate the external relations (Erkelens and Blockmans, 2012). The Commission President arguably overused the rights he was given by the treaty at the cost of the High Representative. However, there was no recorded opposition from the High Representative. The upper echelons of the Commission and the High Representative closely cooperated, to the disadvantage of the member states – in particular in the upcoming negotiations on the EEAS.

The ‘Ashton group’ on the EEAS decision

Close cooperation with the Commission on the set-up of the EEAS continued, at least during the first period of the ‘Ashton group’. Negotiations in Coreper¹²⁶ had already begun prior to the nomination of the HR under the Swedish Presidency. In a report by Coreper to the October 2009 European Council, a taskforce of 15 to 20

¹²⁶ The discussions took place in Coreper II, at the level of the permanent representatives.

people coming from the Commission, the Council Secretariat and the member states was envisaged (Helwig, 2013). The idea of a high-level group led by the High Representative also made it into the Swedish Presidency report on the EEAS.¹²⁷ However, Catherine Ashton did not directly take up this approach. In the beginning, she wanted to be closely involved in the process herself, instead of delegating the task to a working group.¹²⁸ To that end, she held regular meetings with representatives of the Council Secretariat and the Commission, as well as of the three permanent representatives of the trio Presidency. This ‘Ashton group’ comprised 13 members, and was taken up by the media as a “high-level group” (Rettman, 2010a). Indeed, the list of participants reads like a who’s-who of the Brussels lawyer- and foreign policy elite (see Table 5.1). The EP was – to its displeasure – initially not represented, but was allowed to send an observer from mid-February.

	Name	Position
Commission	João Vale de Almeida	Director-General of DG Relex
	Catherine Day	Secretary-General
	Patrick Child	Director of the External Service
	James Morrison	Head of Ashton’s Cabinet
	Luis Romero Requena	Director of Legal Service
Council	Pierre de Boissieu	Secretary-General of the Council
	Jean-Claude Piris	Director of the Council Legal Service
	Robert Cooper	Director-General for External and Politico-Military
	Helga Schmid	Head of the Policy Unit
Member states (Trio Presidency)	Luis Romero Requena	Permanent Representative to the EU, Spain
	Carlos F. A. Minuesa	PSC ambassador, Spain
	Jean de Ruyt	Permanent Representative to the EU, Belgium
	Gábor Ivan	Permanent Representative to the EU, Hungary

Table 5.1: The ‘Ashton group’ on setting-up the EEAS

The working group theoretically represented a forum in which the tensions between the member states and the Commission could be discussed and levelled out. However, this was not the case in practice. According to one of the participants, the workings of the group led to an “institutional clash”,¹²⁹ meaning a conflict between the preferences of the Commission and the member states. The member states had a disadvantage in this set-up, as they had loose ongoing control of the process. While

¹²⁷ Indent 34, Swedish Presidency report.

¹²⁸ Interview #41.

¹²⁹ Interview #36.

the member states were involved though representatives of the Council Presidency, it might be questioned how much influence in the process they actually had. First, the Commission and the Council Secretariat brought a significant amount of institutional- and policy expertise to the table. In addition, the ambassadors of the Presidency were muted by a proviso adopted by the committee in its first session which stated that they take would part “on an individual basis and [would] not represent or speak on behalf of Coreper” (Rettman, 2010a).

Commission and High Representative versus member states

The Coreper meetings in early 2010 were characterised by an omnipresence of the Commission Secretariat/High Representative’s cabinet team, represented by Catherine Day (Secretary-General of the Commission) and James Morrison (Head of Ashton’s Cabinet). At the end of January, the two presented a common proposal with the backing of Commission President Barroso, which would have – if realised – fenced-off important Commission powers vis-à-vis the EEAS. The essential part of this proposal was to keep the programming staff and responsibility of the European Development Fund (EDF), including geographic desks dealing with the ACP (African, Caribbean and Pacific) countries, almost completely in the Commission. However, the Development Cooperation Instrument (DCI) would have been split, with the strategic stages of the programming going to the EEAS. This would have meant a division of the programming of the EDF and DCI, and kept parallel geographic desks in the Commission and the EEAS. The EDF would have been solely under the umbrella of the Commission. Only the ‘pen’ for the general strategic picture, for example for the drafting of geographically specific strategies, would have been given to the High Representative.

The Commission/High Representative proposal clashed with the position of the member states. The argument set forth by Barroso and Ashton was that the proposal would ensure a division of the workload between Ashton and the other Commissioners. Coherence would be ensured by the High Representative’s coordinating function in the Commission. Almost all member states saw this as an

incorrect reading of the Lisbon Treaty,¹³⁰ and as being in sharp contrast to their position paper under the Swedish Presidency. According to them, resources and strategic oversight over development cooperation had to be transferred to the EEAS, which would then support other Commissioners. This move would guarantee coherence and avoid duplication. The programming cycle of instruments would be split between the strategic stages (EEAS) and the implementation stages (Commission), as agreed in the text from the October 2009 European Council. In the end, the member states agreed on this position in the final Council decision. Even though the Commission and the High Representative cooperated in this matter, they did not get their position through. Member states had the aligned preference to strengthen the EEAS on strategic questions of development policies. They prevented their EU-level agents from obtaining unintended discretion, and set up a division of labour in which the EEAS would have almost nothing to say on the major part of the development cooperation budget.

The days of the “Ashton group” were in general demanding for the member states, in terms of control over the process of setting up the EEAS. The Spanish Presidency – not being the proposing body and confronted with conflicting preferences of the member states – had a limited role in the discussions compared to the previous Swedish Presidency. Only limited information passed from the Ashton group to the Permanent Representatives. Papers that would build the basis of the EEAS decision (on the vision, the basic elements, and the organisational chart) were delayed several times.¹³¹ Coreper was confronted with changing interlocutors from the ‘Ashton group’, with a bias towards Commission representatives that could assertively promote their reading of the treaty.

By the end of February, the mood in Coreper was severely subdued and member state representatives were concerned with the speed and format of the process.¹³² The deadline set by the October 2009 European Council for the end of April 2010 was approaching. The member states were facing a risk that the EEAS would fail to be established in the way that they had envisioned it. They had to regain control over

¹³⁰ Interview #41.

¹³¹ Interviews #36, #41.

¹³² Interview #41.

the process, and be more involved in the planning. As a consequence, Poul Skytte Christoffersen (former permanent representative to the EU, Denmark) was appointed by Ashton as her special advisor on the setting-up of the EEAS.

5.3. Towards the March draft

Christoffersen group: member states back in the game

The nomination of Christoffersen marked a major improvement in the position of the member states. From this point onwards, Coreper would have a single interlocutor for the EEAS set-up. In addition, Christoffersen understood the working of the group and the positions of the member states very well. He could be trusted, as he had been part of Coreper as the Permanent Representative of Denmark between 1995–2003, and again in 2009.

Christoffersen took over the work on 1 March 2010. He put together his own taskforce with a limited number of people from the Commission and Council Secretariat.¹³³ As the starting point, he went back to the blueprint discussed during the Swedish Presidency and endorsed by the October European Council 2009. The member states welcomed this reset, as the October European Council decision was much closer to their position than the later joint Commission/High Representative proposals. The blueprint foresaw, in part, a ‘maximalist approach’. Unlike ‘normal’ foreign ministries, the EEAS would have a broad scope of foreign policy instruments at its disposal, ranging from strategic directions of financial instruments (including development) to crisis-management structures.

The member states first focused on the immediate question of the pending nominations of heads of delegations.¹³⁴ Christoffersen and his team then started working on a draft of the main structure and organisation of the service. He worked

¹³³ Interview #41.

¹³⁴ The discussion was especially triggered by the nomination of the Head of Delegation in Washington by the Commission President. The Commission was of the opinion that the old rules, which saw the Commission in charge of nominations, should continue to be valid until the EEAS decision was adopted. However, the member states wanted to be more closely involved in the nominations. They agreed that internal nominations, like the head of the Washington delegation, should be an emergency solution only, and be enacted with the involvement of the member states. Except for one other urgent nomination, the Head of Delegation in Kabul, all other nominations were postponed until later that year.

together with Christian Leffler from the European Commission and the Head of Ashton's Cabinet, James Morrison. The latter was especially responsible for organising the agreement with the Commission on the financial and staff regulations and the first budget, which was placed within the remit of the Commission's right of initiative. In a speech at Maastricht University, Christoffersen recalled the enormous task he was confronted with:

"[...] a lot of people were telling me that my job would be fairly simple: just take the establishment plan of a normal foreign ministry, do a bit of mingling here and there and you have the structure for a European foreign ministry. But the fact is that a European foreign ministry is very different from national foreign ministries." (Christoffersen, 2011)

On 25 March 2010, Catherine Ashton presented to Coreper the draft EEAS Council decision written by Christoffersen and his team.¹³⁵

The March draft represented a more elaborate version of the draft from October. The delimitation of competences and means of coordination between the High Representative and the EEAS were the main focus points for the member states. In this regard, Christoffersen and his team worked out a balancing act between the Commission and the member state positions. However, its wording was in many ways still contested. Key issues included the programming of financial instruments and the work of the Union delegations and their heads.

The programming of the financial instruments largely followed the October 2009 European Council report as demanded by the member states. The early Commission draft that foresaw a much stronger position for the Commission was abandoned. Strategic programming steps of the DCI, *as well as* of the EDF, would be done from the single geographic desks of the EEAS, while implementation would remain in the Commission.¹³⁶ The solution presented allocated the first three stages of the programming to the EEAS and the last two stages to the Commission. This result

¹³⁵ "Proposal for a COUNCIL DECISION of (date) establishing the organisation and functioning of the European External Action Service (25 March 2010)", available at: http://eeas.europa.eu/docs/eeas_draft_decision_250310_en.pdf. Referred to hereafter as the EEAS decision March draft.

¹³⁶ Art. 8 EEAS decision March draft.

was an ambitious one, and the solution arose from the fact that stages two and three were naturally linked, and had to be performed by one entity.¹³⁷

While this solution represented a significant step towards the position of the member states, a broad coalition (including France, UK, Finland, and Belgium as well as a coalition of 10 other member states headed by Malta) wanted the High Representative and the EEAS to have a stronger role in the general coordination of the process.¹³⁸ The March draft still foresaw that the management of financial instruments would be in the hands of the Commission, while the High Representative and the EEAS would *only* “contribute [...] to the programming and management of the financial instruments”.¹³⁹ At the request of the member states, the following sentence was added to the article of financial instruments in the final decision:

*“The High Representative shall ensure overall political coordination of the Union’s external action, ensuring the unity, consistency and effectiveness of the Union’s external action in particular through the following external assistance instruments [...]..”*¹⁴⁰

The above-mentioned member states would have preferred the High Representative to have full responsibility for financial instruments, instead of the ambiguous “overall political coordination”. However, it was hardly possible for them to make additional changes. The wording of the article was agreed language at the highest level of the Commission with the backing of the High Representative. The text also stood a good chance of being accepted by the EP, and the member states themselves had different views on the political independence of development cooperation instruments.¹⁴¹ Moreover, the Spanish Presidency choked off further discussion on the article, as it wanted to obtain political agreement on the EEAS during its term.¹⁴²

The Commission and the High Representative cooperated to the effect that the member states had difficulties keeping the process under control. The agreement first

¹³⁷ Interview #41.

¹³⁸ Background discussions with the author.

¹³⁹ Art. 8(1) EEAS decision March draft.

¹⁴⁰ Art. 9(2), “Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service”, available at: http://www.eeas.europa.eu/background/docs/eeas_decision_en.pdf. Referred to hereafter as the EEAS Council decision.

¹⁴¹ Interviews #10, #25, #41.

¹⁴² Interview #36.

made between the two EU-level agents was difficult for the member states to alter: the Commission would manage the programming, while the High Representative would ensure overall coherence. The geographic desks would move to the EEAS (as requested by the member states), but would remain “under the responsibility of the Commissioner responsible”¹⁴³ for the programming. Decisions would be presented jointly by the Commissioner and the High Representative to the College of Commissioners. In short, the member states realised their preference for having single geographic desks in the EEAS, but the Commission obtained control over them.

Also in play were issues relating to the CFSP budget, the Instrument for Stability, the Instrument for Cooperation with Industrialised Countries, and the Communication and Public Diplomacy, and Election Observation Missions. Article 7(3) of the March draft stipulated that all of these would stay within the remit of the Commission, but under the authority of the High Representative as its Vice-President. During the negotiations, the Spanish Presidency preferred the EEAS to have a stronger role in the administration of the budget. The solution was to physically include the Commission unit in the new service.¹⁴⁴

Another point of concern for the member states was the role of the heads of delegation in the March draft. They were given a broad mandate to ensure the coherence of EU foreign policy on the ground. Article 5(2) ensured that the overall coordinating power over Union matters remained with the Head of Delegation. The Head of Delegation would have “authority over all staff in the delegation, whatever their status, and for all its activities”,¹⁴⁵ and thus hold authority over the Commission staff in the delegation as well. In addition, delegation heads would be accountable to the High Representative “for ensuring the coordination of all actions of the Union”. This also included integrated aspects of external policies, and the representation of common positions of the member states.

¹⁴³ This is the final wording of Art. 9(4) and 9(5) of the EEAS Council decision. The wording of the earlier March draft was even more pronounced, and put the EEAS structures under the “direct supervision and guidance” of the responsible Commissioner (Art. 8(4), Art. 8(5) EEAS decision March draft).

¹⁴⁴ Interview #41. See also Art. 9(6) EEAS Council decision.

¹⁴⁵ Art. 5(2) EEAS decision March draft.

The wording of the article was contested by the member states.¹⁴⁶ Instead of giving responsibility for the coordination of potentially incoherent instructions from Brussels to the heads of delegation, the member states wanted coherent positions between the EEAS and the Commission to have already been achieved in the headquarters. At the request of the member states, paragraph 13 was added to the recitals of the decision, stating that if the “Commission will issue instructions to delegations, it will simultaneously provide a copy thereof to the Head of Delegation and to the EEAS central administration”.¹⁴⁷ A large group of member states, including Italy and France, wanted a more ambitious coordination mechanism, but the High Representative agreed on the above-mentioned mechanism with the Commission, and did not see a problem in the fact that instructions to the Head of Delegation by the Commission and the EEAS could be contradictory.¹⁴⁸ The member states were thus forced to retreat on this position.

Shuffling of units

In the spirit of the Swedish Presidency report, which called the EEAS a “service of *sui generis* nature”,¹⁴⁹ the new draft decision foresaw the EEAS as a “functionally autonomous body”.¹⁵⁰ As such, the EEAS would not be an institution, but would share similar characteristics, such as its own budget. Nevertheless, the EEAS also had many features of a Commission DG, as it was tasked to “take part in the preparatory work and procedures relating to acts to be prepared by the Commission [related to the external action of the Union]”, and enter into service-level arrangements with relevant services of the Commission.¹⁵¹ As described above, in matters of programming of financial instruments EEAS units were also under the direct responsibility of one of the Commissioners.

The line between the Commission and the EEAS was thus very blurred. The annex to the EEAS Council decision, which specified which units would move from the Commission to the EEAS, was still blank. However, the discussions between the two

¹⁴⁶ Background discussions with the author.

¹⁴⁷ Recitals, paragraph 13, EEAS Council decision.

¹⁴⁸ Background discussions with the author.

¹⁴⁹ Indent 16, Swedish Presidency report.

¹⁵⁰ Art. 1, EEAS decision March draft.

¹⁵¹ Art. 3, EEAS decision March draft.

entities and the member states led to the shared opinion that the Commission would see a transfer of its DG Relex as a whole, and the parts of DG DEVCO that were responsible for the strategic programming of financial instruments. For the member states, as well as the EP, the annex was a major prerequisite to political backing for the decision. While the building blocks of the service were more or less clear, an open question was whether the support structures of the Commission (such as legal or language services) would move as well. However, as these were largely centralised within the Commission structures, it became clear that they could not be moved, and that the EEAS would have to enter into service-level arrangements with the Commission instead.

With respect to the transferred structures of the Council Secretariat, the March draft stated that the EEAS should include:

*“the crisis management and planning directorate, the civilian planning and conduct capability, the European Union Military Staff and the European Union Situation Centre, placed under the direct authority and responsibility of the High Representative in her capacity as High Representative for Foreign Affairs and Security Policy.”*¹⁵²

It thus followed the wording of the Swedish Presidency report from October 2009. Some member states were still concerned with the question of coordination with the other units of the EEAS. On the one hand, it was thus agreed that matters of CSDP would be excluded from the consultation with the Commission;¹⁵³ on the other, most member states shared the view that the crisis-management structures needed to find working methods in order to coordinate with the geographic units of the EEAS. The final decision thus included a sentence stating that “[f]ull coordination between all the structures of the EEAS shall be ensured”.¹⁵⁴ It was also perceived at that time that details of crisis-management coordination should not be part of the decision, but had to develop over time.¹⁵⁵ As the member states could not agree on the specific design the EEAS structure, deliberate discretion for the High Representative opened up to decide on the way in which the service should be organised.

¹⁵² Art. 4(3), EEAS decision March draft.

¹⁵³ Art. 3(2) EEAS Council decision.

¹⁵⁴ Art. 4(3) EEAS Council decision.

¹⁵⁵ Interview #19.

Ashton's EEAS vision

Many details on the EEAS decision, such as methods of coordination, procedures and wording, were determined via technical discussions between member state representatives and the Commission. However, Catherine Ashton had her own particular view on the structure of the EEAS. She initially outlined this to permanent representatives in a meeting on 21 April 2010, just ahead of the General Affairs Council that gave political backing from the member states to go ahead with the draft on 26 April 2010.¹⁵⁶ A personal exchange was also beneficial to ease the concerns of certain member states (particularly Germany) over the influence of the UK in the setting-up and staffing process, as well as concerns over the delayed organisational chart (Rettman, 2010b).

The organisational vision for the EEAS of Catherine Ashton was one of a classical corporation. The centrepiece was a corporate board structure at the top of the service. In analogy to a corporate structure, the EEAS would be run by an 'Executive Director' (here Secretary-General of the EEAS), assisted by two 'Managing Directors' (here two deputy Secretary-Generals). One of the deputies would be in charge of the political affairs of the service, while the other took care of crisis-management. Both of the deputy Secretary-Generals would have the possibility to bring all aspects of the service together in performing their respective tasks, and thus provide coherence at the top of the service and avoid a tube structure. Below this top-level structure would be several geographic and thematic Directorates, which would ensure coherence via close coordination.¹⁵⁷

On the question of her deputies, Catherine Ashton was hesitant to install a new system. She was unwilling to come up with a solution to an organisational problem that years of preparatory work have not been able to settle.¹⁵⁸ Her representation in the EP was particularly central in this regard. With the MEPs asking for representatives on a political level, the foreseeable solution was to task the foreign minister of the Presidency (or other member states) and Commissioners with this

¹⁵⁶ Interviews #36, #41.

¹⁵⁷ Background discussions with the author.

¹⁵⁸ Interview #41.

role. The Secretary-General of the EEAS and its deputies might be used for reporting to the EP as well, if the MEPs accepted them.

Even though the member states were not convinced by the overall structure of the service, there was no open opposition in the Coreper meetings. Informally, however, the establishment of a Managing Director for Crisis Response – additionally to the already existing crisis-management capabilities – raised eyebrows among the member states.¹⁵⁹ Without a fully sketched-out organisational chart, and with the political pressure related to getting ahead in the process, the member states did not table amendments. In anticipation of the following discussions with the EP and the attention of the media, backing from the General Affairs Council was needed in order to ensure political momentum.¹⁶⁰ The costs of arriving at no decision became too high and the member states needed a declaration expressing their ability to agree on the structures of the new service.

In any case, the declaration by the General Affairs Council in the following days did not yet carve the EEAS decision in stone, but enabled the process to move forward. A large coalition of member states (including Germany, Italy, and a coalition of 10 member states headed by Austria) threatened at the last minute to veto a declaration of the General Affairs Council without a concrete way in which to reach a one-third quota of member state officials in the new service. However, the 26 April meeting succeeded in the end, and the member states gave political backing to the draft by Ashton, Christoffersen, and his team. Now the political discussions with the EP could start.

5.4. MEPs flex their muscles

The EP's wildcard

According to Art 27(3) TEU, the EP did not formally have to agree to the Council decision on the EEAS. However, MEPs threatened to veto the financial and staff regulations of the new service, and thus an agreement could only be reached by “de-facto co-decision” (Drieskens and Schaik, 2010: 2). The EP’s strong stance did not

¹⁵⁹ Interview #41.

¹⁶⁰ Interview #36.

come as a surprise, as this was already signalled in the ‘Brok report’ of October 2009, which reiterated the EP’s “determination to exercise its budgetary powers to the full in connection with these institutional innovations”.¹⁶¹ Therefore, Christoffersen and his team already had informal contacts during their preparation of the draft decision.¹⁶² However, the MEPs felt that their views were not taken into account in the EEAS decision March draft, which they criticised immediately after its release (Verhofstadt, 2010). The EP conference of Presidents confirmed that the various aspects of the EEAS decision would be treated as a package (European Parliament, 2010a).

In a non-paper by Elmar Brok (EPP) and Guy Verhofstadt (ALDE), the EP clearly outlined what it had in mind, which resonated with previously held views (Brok and Verhofstadt, 2010). The document highlighted that the set-up of the EEAS must be “a logical extension of the *acquis communautaire* in the sphere of the Union’s external relations”. As the EEAS can neither be an institution as defined by the Treaties, nor an agency or office, the EEAS has to be a service linked to the European Commission. Only this link would ensure the coherence of EU external activities, the political accountability of the service and the preservation of the “Community Model”.

Political accountability was especially underlined in the document. Given the various tasks of the High Representative, a number of politically accountable deputies had to be established. The EP had a six-people-strong EEAS leadership group in mind. With regard to Commission policies, this group would consist of the three Commissioners for Neighbourhood, Development and Humanitarian aid; concerning the foreign policy competences of the High Representative, the group would contain three politically accountable deputies in charge of bilateral, multilateral and crisis-management issues.¹⁶³ The idea of the MEPs was that this set-up would ensure coherence in the various aspects of the EU’s international activities, as the group

¹⁶¹ Paragraph 8, European Parliament 2009 report.

¹⁶² Interview #41.

¹⁶³ In order to make them politically accountable to the EP, they would be appointed using Art. 33 TEU on EU Special Representatives: “The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative.”

would always have to be consulted before a proposal went out to either the Commission College or the Council.¹⁶⁴ Hearings of the Heads of Union delegations, as well as regular reporting by the High Representative, would ensure political accountability to the EP.

On the question of how to organise the programming of the financial instruments, especially concerning neighbourhood and development policy, it appeared that the EP was internally divided.¹⁶⁵ One side made the argument that a strong and coherent foreign policy could only be achieved by assigning the preparation of strategic decisions to the EEAS, while the Commission would only be responsible for the implementation. Brok and Verhofstat thus argued that “[a]ll the external assistance instruments except for the Pre-Accession Instrument should be programmed within the EEAS”, and only implemented in the Commission. On the other hand, the development committee in the EP wanted to avoid development objectives becoming subordinate to foreign policy interests if competences were to be concentrated in the EEAS.¹⁶⁶ In the subsequent negotiations, the EP was thus in a weak position to alter the already balanced compromise of the member states and the Commission on the division of labour in financial programming.

Quadrilogue and its outcome

Based on these positions, the MEPs immediately criticised the proposal drafted by Ashton’s team, and her vision of strong corporate leadership by the EEAS. Ashton’s March proposal included a Secretary-General of the EEAS, which, according to the text, would “take all measures necessary to ensure the smooth functioning of the EEAS, including its administrative and budgetary management”.¹⁶⁷ In the eyes of the MEPs “the proposed structure with an omnipotent secretary-general and deputy secretary-generals does not provide the politically legitimised deputies that the High Representative needs in order to do her job properly” (Verhofstadt, 2010). Politically accountable deputies thus became a major claim of the EP, alongside other measures that would improve political accountability, such as hearings of senior postings. In

¹⁶⁴ Interview #23.

¹⁶⁵ Interviews #23, #25.

¹⁶⁶ Interviews #23, #25.

¹⁶⁷ Art. 4(1) EEAS decision March draft and EEAS Council decision.

addition, the EP kept insisting on having the EEAS closely linked to the Commission. Even though this demand was rejected every time it came up, the EP asked to have the EEAS as a DG of the Commission. However, some officials of the Parliament involved in the negotiations saw this move as a “bargaining chip”, which would at least ensure that the EP had Commission-like scrutiny rights over the EEAS budget.¹⁶⁸

In order to solve the issues with the EP, the parties convened in the so-called quadrilogue meetings, which took place between April and July 2010.¹⁶⁹ The four parties involved were the HR special advisor Christoffersen (and at the last meeting also HR Ashton) and representatives of the Commission, Spanish Presidency, and the EP.

Different interpretations of the significance of the quadrilogue process and its outcome exist. The dividing line in those meetings was between the member states and the MEPs. According to the EP, the March draft was an attempt by the member states to control foreign policy to their liking, thereby blocking political accountability and taking control over integrated aspects of foreign policy. Only the EP’s intervention safeguarded a communitarian and politically accountable service (see also European Parliament, 2010b).¹⁷⁰ The media happily picked up on this version, and portrayed the meetings as a ‘turf war over the EEAS’ (Mahony, 2010; Vogel, 2010).

The member states’ view was quite the opposite. After tedious and technical discussions with the Commission, the member states were happy to have found a compromise that represented an acceptable institutional balance. The negotiations with the EP were necessary, but discussions for the member states seemed more like

¹⁶⁸ Interviews #23, #25.

¹⁶⁹ The initial meeting took place in the Council building and was perceived as suboptimal by the three EP representatives Elmar Brok, Guy Verhofstadt, and Roberto Gualtieri. The EP delegation perceived it as unfavourable that the HR representative Christoffersen was seated between the permanent representative from Spain and a representative of the Council legal service (Interview #25). The representative of the HR/VP, which is neither strictly Council- or Commission-owned, was seated in the Council negotiation camp. As they feared that this would influence the outcome of the negotiations towards a stronger position of the member states, the seating was changed from the initial meeting onwards, and Christoffersen was seated independently on a four-sided table at the next meeting that took place in the parliament building.

¹⁷⁰ Interviews #16, #23, #25.

a psychological and political exercise, which ensured that the MEPs were included in the process. The quadrilogue was thus not a ‘big institutional battle’, nor did the member states or the High Representative give in to any significant extent.¹⁷¹

Looking at the observable outcome of the proceedings, the actual result lies somewhere in the middle. In many instances, the EP found it could implement changes to the wording of the articles, which clarified responsibilities, helped to avoid misunderstandings, but did not change the broad line agreed beforehand. A point that was clarified was that the EEAS would, in budgetary terms, be treated like an institution, with full budgetary oversight by the EP. The operational budget would thus stay in the Commission budget, while the separate administrative budget would be under the control of MEPs (Erkelens and Blockmans, 2012; European Parliament, 2010b). In addition, the article on the planning of the financial instruments was worded in greater detail. Some authors have suggested that the new wording and the mentioning of the EEAS in ensuring the coherence of the overall programming goes mainly back to the initiative of the EP (Erkelens and Blockmans, 2012); however, the above Coreper discussions suggest that the initiatives of the member states had a more direct impact on the outcome.

Given the late stage of the negotiations of the member states and the Commission on the EEAS, the two claims of the EP – that is, keeping the EEAS inside the Commission and having politically accountable deputies for the High Representative – were “non-starters”.¹⁷² However, the EP was willing to give in on these positions in exchange for a strong text on the political accountability of the service. This fallback position was initiated by MEP Elmar Brok, and can be considered the EP’s main achievement in the quadrilogue (Brok, 2011).

Enhanced political accountability

The EP achieved greater political accountability mainly through a declaration on political accountability by the High Representative¹⁷³ that would become “the

¹⁷¹ Interview #41.

¹⁷² Interview #41.

¹⁷³ Declaration by the High Representative on political accountability, 8 July 2010, Strasbourg, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA->

reference document [...] for the cooperation of the foreign policy executive with the Parliament” (Helwig et al., 2013: 51). As politically accountable deputies were an impossible demand made by the EP, the declaration on political accountability foresaw that the High Representative would be replaced, either by a Commissioner (for exclusively or prevalingly Commission competences) or a member of the rotating trio Presidency (for CFSP).¹⁷⁴ On a political level, the civil servants of the EEAS were rejected as interlocutors. This result reflected opposition to the idea of the High Representative having strong autonomous leadership at the top of the EEAS, and being capable of ensuring the management and representation of the Brussels headquarters (see above; EurActiv, 2010). In order to ensure the EP’s consent, the half-sentence stating that the Secretary-General “shall represent the EEAS” was deleted from Article 4(1) of the EEAS Council decision. Part of the overall deal was also to ensure the frequent presence in the EP of the High Representative.¹⁷⁵

In addition, the EP managed to be consulted in more cases and at earlier stages of the decision-making processes and planning of the EEAS. Until that point, the EP was only *ex post* informed of CFSP actions. The declaration on political accountability now significantly improved the EP’s position, and the EP’s views were now heard “prior to the adoption of mandates and strategies in the area of CFSP”.¹⁷⁶ The MEPs also ensured that the heads of delegation have to come to parliament for an exchange of views, after their nomination and before they start their job at an MEP’s request.¹⁷⁷ In general, it was written down that the EEAS would have an open policy towards the EP by for example, including a department for relations with the EP into the structure,¹⁷⁸ and facilitating appearances by higher-level officials of the EEAS.¹⁷⁹

2010-0280+0+DOC+XML+V0//EN#top. Referred to hereafter as the declaration on political accountability.

¹⁷⁴ Point 6, declaration on political accountability.

¹⁷⁵ The High Representative agreed to have the following interactions with the EP: 6x EP-plenary (including 2x per annum special question), 2x AFET, 1 - 2x Enlarged Bureau of AFET, 1x Election Coordination Group, 1x in DEVE, 1 - 2 x Conference of Presidents. Interview #16.

¹⁷⁶ Point 1, Declaration on political accountability.

¹⁷⁷ Point 5, Declaration on political accountability.

¹⁷⁸ Statement given by the High Representative in the plenary of the European Parliament on the basic organisation of the EEAS central administration, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0280+0+DOC+XML+V0//EN#top>

Next to the declaration on political accountability, arguably the biggest achievement of the EP in terms of ensuring the communitarian features of the new service was to make the EEAS budget subject to the community rules (Erkelens and Blockmans, 2012: 22ff). As a consequence of pressure from the MEPs, the EEAS had to “follow the same budget lines and administrative rules as are applicable in the part of Section III of the Union’s budget which falls under Heading 5 of the Multiannual Financial Framework”.¹⁸⁰ In addition, the MEPs made sure that all operational expenditures of the service remained in the Commission section of the budget.¹⁸¹

Conclusion

The creation of the EEAS’s basic organisation and functioning is an illuminating example of PA interaction. In particular, it sheds light on the possibility, limits and control of supranational agency. It provides a crucial case with which to re-examine the hypotheses developed in the theoretical chapter, and to test the influence of the variables.

The conflicting preferences of the member states, according to the theory, resulted in unintended discretion for the High Representative (H1). Evidence that supports this hypothesis was found with reference to the set-up of the EEAS. For example, when member states had aligned preferences on the creation of single geographic desks in the EEAS that comprise the work of the DCI and of the EDF, they successfully sanctioned the unintended actions of the High Representative and made sure that all geographic desks would be transferred to the EEAS. However, when member states failed to align their position, the High Representative was given unintended discretion over the design of the service. For example, member states could not agree on the extent to which the crisis-management structures should be interlinked to other units within the service. They kept this part of the discussion open, and did not give any detailed instructions to the High Representative. When the High Representative introduced her own vision of the service, including a new directorate

¹⁷⁹ Point 7, Declaration on political accountability.

¹⁸⁰ Art. 4(3a), indent 2, EEAS Council decision.

¹⁸¹ Art. 8(1) EEAS Council decision. The EEAS decision March draft only foresaw parts of the operational expenditure in the Commission section of the budget (see Art. 7(3) EEAS decision March draft).

for crisis response, the member states had no common position from which to alter the proposal.

H2 suggests that loose control and oversight mechanisms of the member states granted unintended discretion to the High Representative. H2 is supported by the fact that the ongoing control of the member states played a crucial role in the EEAS decision-making process. When the member states were not informed about the developments and details of the planning during the negotiations of the ‘Ashton group’, the High Representative (together with the Commission) had unintended discretion when coming up with a proposal that contrasted with the member states’ position. This changed after the nomination of Christoffersen as the official ‘architect’ of the EEAS, as he was in permanent contact with Coreper.

However, the empirical evidence also leads to a partial rejection of H2: the report by the Swedish Presidency on the EEAS should have *ex ante* limited the discretion of the High Representative over the design of the EEAS by defining the competence distribution with the Commission in considerable detail. Interestingly, the High Representative and the Commission did not feel bound to the details of the report by the member states, and instead made contradictory proposals.

The set-up of the EEAS deserves a “Guinness record for speed” (Drieskens and Schaik, 2010: 1), as all parties managed to set up the basic outline of the EEAS within half a year. In line with H3, the time pressure increased the discretion of the High Representative. Often, the member states did not have time to make amendments to the proposal by the Commission. Further discussion on the difficult article on financial programming was stopped by the Spanish Presidency, which wanted an agreement to be reached during its term. In April 2010, member states were ‘pushed’ to give their political backing to the EEAS draft decision of the High Representative, as a disagreement would have looked weak in the eyes of the public.

The findings of this chapter make a particularly compelling case for H4 and the positive effect of agent cooperation on their discretion. Up to the start of the Lisbon Treaty, all signs from the interaction of the Commission and the High Representative concerning the design of the EEAS were hinting at competition. The EEAS and the

Commission clearly had overlapping competences; therefore, it was surprising to find that no competition ensued after the Lisbon Treaty came into force. As mentioned by Ashton herself, she and the Commission President were in agreement that many resources, as well as management and coordination competences, should remain in the Commission. The member states were thus bystanders when Barroso reshuffled the Commissioners and their DGs to the Commission's advantage. The Commission, in cooperation with the High Representative, also partly managed to keep some competences over financial programming in the Commission, despite protests from the member states. However, when member states could agree on a position, they made sure to reject the Commission/High Representative proposal.

The EP, as the other EU-level agent, entered into the game too late to have a significant influence on the set-up of the EEAS, and thus did not have an effect on the discretion of the High Representative. This chapter's findings suggest that the role of the EP in the setting up of EEAS has been largely overstated in the current literature (Bien, 2010; Brok, 2011; Erkelens and Blockmans, 2012). Political accountability was improved thanks to the declaration of the High Representative; however, changes to the basic decision of the EEAS were of a cosmetic nature, and none of the major points that the EP wanted to push through since the days of the European Convention made it into the text (such as politically accountable deputies, or an EEAS inside the Commission). An exception was the additional budgetary oversight by MEPs. The marginal role of the parliament was not surprising, since the EP was let into the decision-making process very late. The member states and the Commission had already found their compromise, and thus had a 'first mover' advantage.

In conclusion, the hypotheses are largely confirmed. Together, they suggest an explanation for the cause of events during the set-up of the EEAS. Due to conflicting preferences, limited ongoing control, agent cooperation, as well as time pressure, the member states, as the collective principal of the High Representative – and the fathers of the idea to form a common external service – lost control over the process of setting up the EEAS.

6. In action: the constrained High Representative

An analysis of the initial years of the revamped post of High Representative has to be put into the challenging context of the time. While internally the new EEAS still had to be established and gain full working speed, the EU was externally challenged from the start with sweeping changes in the southern neighbourhood. Catherine Ashton herself often described her experience as “trying to fly a plane while still bolting the wings on” (Ashton, 2013b: 1) Nevertheless, the evidence gathered for the following analysis reveals PA dynamics that are, to some extent, independent from the transition phase of the EU foreign policy architecture. It is shown that independent long-term features of EU foreign policy – conflicting preferences as well as tight member state control – resulted in a High Representative with limited discretion.

For a detailed analysis, the chapter is divided into a close evaluation of four different task areas of the High Representative.

- As an agenda manager the High Representative oversees the decision-making process in the area of EU external action performing the role of Vice-President of the Commission and being in the chair of the Foreign Affairs Council, thereby setting, managing and focusing the choice of available policy alternatives and reducing the transaction costs of member-state coordination.
- The task area of a strategist includes transformational decision-making beyond the management of the status quo as well as the framing of particular policy problems in the light of long-term goals, thereby potentially overcoming deadlocks in the decision-making process.
- In international crisis situations, the High Representative has to perform tasks of a crisis manager in order to contain the crisis and seek a solution, while faced with threat, uncertainty and urgency.
- Finally, the High Representative has to communicate the Union’s position to outside audiences and coordinate statements with member states.

6.1. The High Representative as an agenda manager

“It is us [the EEAS and the High Representative] who set the agenda and set out what we think we should conclude and then try and reach that agreement. In the end, this is about Europe going forward. It is not about me being over here and the rest of the 28 nations being over there, because that is pointless.” (Ashton, 2013a)

Before the ratification of the Lisbon Treaty, the High Representative for CFSP continuously represented the EU on behalf of the rotating Presidency, without having the formal possibility to provide feedback into the policy agenda.¹⁸² Moreover, cooperation with the Commission was based on informal procedures. This shortcoming was tackled in the Convention on the Future of Europe (see Chapter 4). In terms of agenda-management, the High Representative received the powerful Presidency role within the CFSP, as well as the ability to table proposals in this policy field. The High Representative also received a “coherence mandate” (Blockmans and Hillion, 2013: 10), which stipulated that the post would ensure the consistency of the Union and its holder would be responsible for the external portfolios of the Commission, as well as their coordination.¹⁸³ This section looks at the effects of these provisions in the first years after the Lisbon Treaty. Did the High Representative have any discretion over the policy agenda implemented by the member states and the Commission?

28 shadow presidencies

Ashton, as the chair of the Foreign Affairs Council, obviously played a role in its agenda-setting process. After all, she formally drafted the agenda for the meetings and worked together with the Policy Coordination Unit of the EEAS to ensure input from the various thematic and geographic desks of the service. The concrete agenda for the meetings with the member states still followed the six-month rhythm, while internally they set up a longer planning horizon of up to one and a half years.¹⁸⁴

¹⁸² Pre-Lisbon, the High Representative for CFSP did not have the same Treaty-based prerogatives, such as a formal right of tabling CFSP initiatives or chairing the Foreign Affairs Council and its working groups. Thus Solana had to rely on the rotating Presidency to take up proposals and feedback.

¹⁸³ Art. 18(4) TEU and 21(3) TEU.

¹⁸⁴ Interviews #47, #22.

Formally, the High Representative was managing the foreign policy agenda. Under the surface, however, member states kept control over it. The member states always had the potential to suggest items in Coreper for the agenda of the Foreign Affairs Council, if they felt that certain issues should be discussed.¹⁸⁵ However, after Lisbon it became a custom that Ashton received a number of letters from foreign ministers ahead of Council meetings in which they asked to put certain issues of interest up for discussion among ministers.¹⁸⁶ Balfour and Raik (2012) identified the increasing efforts of small and medium-sized member states, in particular, to “upload” national preferences and use the EU as a “power multiplier”: examples of national pet-projects included the Swedish push for a European Institute of Peace, and the Polish campaign for a European Endowment for Democracy. The High Representative did not have the authority of the rotating Presidency, which – by virtue of being a fellow member state – had the power and sovereignty to carry through priorities, which it based on its geographical or historical characteristics.¹⁸⁷ To put this more bluntly, instead of creating one permanent Presidency for five years, the Lisbon Treaty created 28 shadow presidencies that all wanted to get their priorities through and tried to hijack the agenda in relation to that aim.

The effect of this procedure contradicted the initial idea of a more streamlined agenda-management. In an attempt to fulfil the ‘shopping list’ of the member states, as well as of the geographic and thematic desks of the EEAS, the agendas for the foreign minister meetings often became overcrowded.¹⁸⁸ The High Representative had limited agency in agenda-setting, as the member states had *ex ante* tight control over the agenda, and gave a detailed mandate to the High Representative regarding what points to put for discussion.

The discretion over the procedural control of the agenda – that is, the actual chairing of the minister meetings and preparatory groups – was also limited. The High Representative and delegates chaired the Foreign Affairs Council and WGs, but

¹⁸⁵ Interview #49.

¹⁸⁶ Interview #43.

¹⁸⁷ A study comparing several Presidencies revealed that the priorities of rotating Presidencies are a product of a long process of domestic preference aggregation, and carry particular weight (Elgström, 2003). This point was also raised by interviewees #6, #9, #43.

¹⁸⁸ Interviews #39, #49.

within this task were not left with expanded capacity for autonomous action. This was not a negative feature of the new system, but reflected the inbuilt function of an international WG chairmanship, which is to broker a deal between often-conflicting preferences, rather than to present its own positions (Schout and Vanhoonacker, 2006; Tallberg, 2004). In accordance with that function, the EEAS adopted the view at the highest level that the WG chairpersons should work closely with the member state representatives.¹⁸⁹

The member state representatives recognised that the EEAS chairpersons of the various Council groups had more time to personally engage with the group compared to pre-Lisbon times. Being part of the bigger EEAS machinery for longer than six months allowed them to invest more in maintaining contacts with the member state diplomats, and to keep them up to date on the latest developments on a formal and informal basis.¹⁹⁰ This approach was actively promoted by the High Representative: in the case of the PSC chair, she consulted every ambassador of the group before appointing Olof Skoog, who was trusted and well-known by his colleagues.¹⁹¹

However, the Foreign Affairs Council had its own dynamics. Given its full agenda, High Representative Ashton reportedly tried to keep the meetings and discussions short. For example, she choked-off long interventions of foreign ministers, and prevented the reopening of already discussed agenda-items.¹⁹² The verdict to this approach was mixed. Some observers saw it as a welcome change to the times of the rotating Presidency, where the chair would never have interrupted a fellow minister, which led to lengthy discussions.¹⁹³ Others felt that the High Representative lacked a certain feel for the member states' positions.¹⁹⁴

To sum up, the fact that Catherine Ashton and her aids were delegated permanent chairing in the area of CFSP did not have the effect of unintended discretion over the foreign policy agenda. This somewhat hampered the continuity and effectiveness of EU foreign policy, as member states tightly controlled what was discussed, and put

¹⁸⁹ Interview #18.

¹⁹⁰ Interviews #6, #9.

¹⁹¹ Interview #9.

¹⁹² Interviews #36, #15.

¹⁹³ Interview #36.

¹⁹⁴ Interview #15.

forward a plethora of diverse priorities. The pre-Lisbon rotating Presidency was also a member state, and was thus immune from being told what to prioritise in the discussions. Member states knew it would be their turn to set the agenda, and hence refrained from excessive mutual interference in the agenda-management. The EEAS and the High Representative did not have this benefit of being seen as one of the member states and were thus prone to be closely controlled.¹⁹⁵ Furthermore, the High Representative did not have the authority of a rotating Presidency to insist on a streamlined agenda. However, a major advantage was smoother running of the WGs, which did not have to adjust to new chairpersons with varying levels of experience.¹⁹⁶

The Commission Vice-President hat

How did agenda-setting take place within the Commission? Formally, the High Representative is “responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action”.¹⁹⁷ Blockmans and Erkelens (2012) even read from this provision that the High Representative alone is charged with coordinating the external aspects of the Union within the Commission. However, the performance of the first years of the service did not indicate that the High Representative was able to manage the Commission agenda and to coordinate the other Commissioners and their services.

The set-up of the EEAS already showed, that the Commission President claimed a strong coordinating role in the immediate phase after the entry into force of the Lisbon Treaty. Nevertheless, the HR/VP still had possible formal ways to manage the agenda: she was able to call in the Commissioner group on external relations and – as the lead Commissioner – would have been able to circulate the discussion papers for such meetings. However, in reality this hardly ever happened. Up to December 2012 the group met five times (Helwig et al., 2013), and the first meeting was even a

¹⁹⁵ Interviewees #2, #6, #7, #22, #49, who were either involved in the chairing or were members of a WG in the Council, described the tension within the system, highlighting that the Presidency, run by the EEAS and the High Representative, is seen as an institution that holds the power of agenda-management, which needs to be controlled.

¹⁹⁶ Interviews #6, #9, #18, #22.

¹⁹⁷ Art. 18(4) TEU.

“non-meeting”, without an agenda.¹⁹⁸ In 2013 another two breakfast meetings were conducted on China and Syria; both were chaired by the Commission President, with the High Representative playing a “leading role”.¹⁹⁹

While the High Representative had discretion to organise meetings, this opportunity was not used. In line with the theoretical assumptions of the bureaucratic politics approach, bureaucracies are slow to adapt to changes and tend to compete for competences in order to preserve themselves. Close observers said that the limited role of the High Representative as Vice-President in the Commission was due to the fact that the High Representative joined the second Barroso Commission.²⁰⁰ A Commissioner group under the chairmanship of the Relex Commissioner was first tried out in the Prodi Commission (1999–2004), and worked reasonably well. However, Barroso changed this practice when he entered office in 2004 and took charge over the individual sub-groups (Missiroli, 2007). During Barroso’s first term (2004–2009), Commissioner groups played a limited role and the old, top-heavy system was carried over to the new Commission regardless of Catherine Ashton’s new powers.²⁰¹ Another argument is that the Vice-President role would have been more efficient if the Lisbon Treaty had introduced a smaller number of Commissioners, as well as “Junior Commissioners”.²⁰² The explanation thus is rooted in the path-dependency²⁰³ of the institutional development of the Commission, and could potentially vary over time and under other political figures.

Thus, in her first term, the High Representative had little discretion to set the agenda within the Commission. Besides the external relations group of Commissioners, the

¹⁹⁸ Interview #32.

¹⁹⁹ Interview #48.

²⁰⁰ Interviews #46, #48.

²⁰¹ Interview #46.

²⁰² Interview #48. A decision of the European Council in December 2008 stipulated that the number of Commissioners should remain equal to the number of member states. While “Junior Commissioners” were part of the draft Constitutional treaty, member states dropped the distinction between non-voting and full Commissioners in the 2004 IGC.

²⁰³ The concept of path-dependency is not explicitly part of the theoretical framework of this study, however, it might bring additional insights to the evaluation of the topic. The basic idea behind the concept is that earlier choices for certain courses of action or organisational designs make other alternative options more costly, even though they might be more favourable at a later stage of the process (see, for example, Bulmer, 1993; Pierson, 1996). In the case at hand, the decision of Barroso prior the adoption of the Lisbon treaty to have a centralised organisation of the Commission caused the development of certain working cultures and processes that could not be easily altered when the Lisbon treaty entered into force.

High Representative still had the possibility to interact with Commissioners individually. A think-tank study concluded that the ability for effective working relations varied across policy fields (Helwig et al., 2013). The cooperation with the Commissioner for neighbourhood policy (Füle) was identified as a positive example, with the High Representative and the Commissioner forming a “tandem”.²⁰⁴ In terms of cooperation, the review of European Neighbourhood Policy was rated as a success (though the verdict on its effects was still out).²⁰⁵ On the other hand, coordination with the Humanitarian Aid Commissioner was reportedly more challenging.²⁰⁶ Interviewees pointed out that the ‘non-political’ character of humanitarian aid is at odds with the idea of coordination set forth by the EEAS.²⁰⁷ In general, it is questionable whether this coordination system, which relied on individual cooperation between the Commissioners, instead of an institutionalised coordination in the external relations Commissioners group, represents a significant improvement in comparison to pre-Lisbon.

Managing the unmanageable

The discretion for the High Representative to manage the foreign policy agenda is much lower than Treaty articles would suggest. Pollack (1997) argues that it is not enough to look only at the formal possibilities of an agent to put issues on the agenda; it is also necessary to focus on the possibilities of other actors to amend or refuse the agenda. Taking this into account, the new Lisbon rules on agenda-management have a limited effect on the discretion of the High Representative. The member states have plenty of possibilities to amend the EU foreign policy agenda and, more precisely, the agenda of the Foreign Affairs Council. In contrast to H1,

²⁰⁴ Interviews #3, #48.

²⁰⁵ Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy, and the European Commission, A New Response to a Changing Neighbourhood – A review of European Neighbourhood Policy, Brussels, 25 May 2011, available at: http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf.

²⁰⁶ A vivid example of this is Kristalina Georgieva’s statement that a coordination of humanitarian aid efforts by the High Representative would only be possible “over [her] dead body” (Willis, 2011).

²⁰⁷ Competition between the DG in the Commission and the EEAS developed when the EEAS established a Directorate for Crisis Management and Operational Coordination, and whose director dubbed a visit to meet the Libyan National Transitional Council in May 2011 as a “humanitarian mission”. Officials in the European Commission feared that a political use of the phrase “humanitarian aid” could endanger their work (Helwig et al. 2013, #33, #34). See also the discussion of Libyan case in section 6.3.

conflicting preferences among the member states did not lead to more discretion for the High Representative. On the contrary, every member state had in practice the possibility to realise its preferences and to table its pet-projects.

The High Representative might have been able to put items *on* the agenda, but she missed the often-needed authority to scrap items *from* the agenda. The time pressures (H3) of the day-by-day of foreign policy making only reinforced the development towards an overblown and unfocused agenda. A top Council Secretariat official commented, “the meetings of the Foreign Affairs Council became too ritualistic; they are not interesting anymore. Member states walk out of the door”.²⁰⁸ Agenda-management is thus not only the art of introducing items to the schedule, but also getting the member states on board. Vanhoonacker and Pomorska (2013) argued that Catherine Ashton and the EEAS managed to build up the organisational structures necessary for agenda-management. However, they lacked the strategies to claim authority over certain issues, and to focus the attention of the member states on them.

The advantage of linking the different spheres of EU foreign policy making via the Vice-President post in the European Commission did not bear fruit either. Again, while there existed a potential to put items on the agenda, there was no authority on the side of the High Representative to carry this agenda through vis-à-vis fellow Commissioners. The different policy fields of the Commission follow their distinct policy agenda. The competition over the foreign policy agenda between the Commissioners and the High Representative limited the High Representative’s agenda-management discretion (H4).

The foreign policy agenda in general is rather event-driven, and provides for limited agency by any actor. However, the analysis shows that supranational agency in agenda-management is in addition to that constrained by the multitude of priorities stemming from the collective principal, as well as competing agents. While this section solely focused on the possibility to manage the agenda, the next section will look at the discretion to develop strategies.

²⁰⁸ Interview #49.

6.2. The High Representative in search of a strategy²⁰⁹

A new strategic doctrine?

*“EU foreign policy is different. You may have your own vision and your own idea. But the nature of EU foreign policy is that you are not to go alone. Everyone has to be happy [...]. This is why there are limits. But there are benefits: once you reach a decision, there is a good chance that it is a good one”.*²¹⁰

The European Security Strategy (ESS), written in 2003 by High Representative Solana’s team, can serve as an example of a strategic doctrine. It sought to identify challenges to, and the objectives of, EU foreign policy, and translate these into policy implications for the Union (European Security Strategy, 2003; Lazarou et al., 2014). Leaving aside the question of whether the ESS was a success, it is a fact that a similar comprehensive exercise has not taken place during the first term of the High Representative of the Union.

Nevertheless, the EU machinery has produced strategic documents. It was very active regarding the adoption of sectoral and regional strategies, such as the Sahel Strategy (EEAS, 2011) and the Action Plan on Human Rights (Council, 2012). Still, experts highlighted a need for a new overarching, or “grand”, strategy (Biscop, 2013). While the identified threats and objectives of the ESS might still be valid,²¹¹ the context in which the EU is placed is in permanent flux. Notably, the rise of the BRICS countries (Brazil, Russia, India, China, South Africa) (Renard, 2010) and the worldwide economic crisis that refocused attention on economic issues (Grevi and Renard, 2012; Lehne, 2012) created a demand for a new strategic doctrine. While the 2003 ESS had a focus on issues of security policy and multilateralism, the last decade saw additional attention on a more comprehensive set of policies, and the development of strategic relations with key international partners (Bouchard et al., 2014). What discretion did the High Representative have in the dynamic strategic landscape of the EU?

²⁰⁹ This subsection draws on Helwig (2013).

²¹⁰ Interview #42.

²¹¹ Interview #50.

A disaster for Europe and its consequences

“A disaster for Europe” is how Herman Van Rompuy assessed the weak performance of EU diplomacy at the Copenhagen climate change conference in 2009 (US cables, 2010). He announced a special meeting of heads of state or government and foreign ministers to discuss how better to engage with strategic partners (European Council, 2010c: 15). Strategic partnerships were not a new instrument of the Union, but were already specifically mentioned as a tool in the 2003 ESS, which referred to the US, Russia, Japan, India, China and Canada. However, despite the need for close cooperation, the Strategy did not go into further detail on how broader objectives would be strategically pursued with each partner (Renard, 2013). As Van Rompuy (2010) put it: “We have strategic partnerships, now we need a strategy”. In September 2010, the European Council asked “the High Representative, in coordination with the Commission and with the Foreign Affairs Council, to evaluate the prospects of relations with all strategic partners, and set out in particular our interests and possible leverage to achieve them” (European Council, 2010a: Annex I).

At the meeting, the High Representative presented a list of nine strategic partners: Brazil, Canada, China, India, Japan, Mexico, Russia, South Africa and the US. Especially in the early phase, she ‘pushed’ the issue of strategic partnerships intensively.²¹² The scope of the exercise was open, and no specific mandate was given besides the need for “medium-term planning that sets out objectives to be reached over time, with each summit concentrating on two or three core issues” (European Council, 2010a). In addition, the task fitted the double-hatted character of the post and drew benefits from Ashton’s role as Commission Vice-President.²¹³ In theory, the unspecified mandate and the opportunity to cooperate with other services in the Commission should have opened up the possibility for unintended discretion on the part of the High Representative. However, it led to only few results.

The problems during the process of ‘beefing up’ the partnerships were numerous, and stemmed from a lack of organisation and focus. The heads of state or

²¹² Interviews #43. #51.

²¹³ Interview #32.

government had an extensive discussion on the subject during the September 2010 European Council meeting. However, the discussions led to a ‘Christmas-tree’ approach, meaning that the diverse preferences of the member states instigated a long shopping list of strategic partners and priorities that lacked focus.²¹⁴ The following December 2010 European Council meeting was not much different in this regard. The documents produced by the High Representative were not concrete policy papers, and the lack of focus led to a brainstorming session, rather than a constructive discussion. The heads of state or government were not engaged in the discussion,²¹⁵ and got even more disengaged in the process that followed.²¹⁶

On top of the disengagement of the heads of state or government, the High Representative’s cooperation with the Commission and the Foreign Affairs Council was scarce. DGs of the Commission were not thoroughly consulted, even though their input would have been relevant regarding energy policy towards Russia, or trade policy towards the US.²¹⁷ The strategic unit of the EEAS, as well as the corporate board member of the EEAS responsible for strategic partnerships, were part of the process only at a later stage.²¹⁸ In autumn 2012, the strategic partnerships were high on the agenda for the September informal Gymnich meeting of foreign ministers in Sopot. However, dissatisfaction among the member states’ delegations was apparent, as the papers were only circulated the evening before the meeting, and again led to an unfocused discussion with few results.²¹⁹ The High Representative allowed only a limited degree of oversight of the drafting process; therefore, the Commission, as well as the member states, lost ‘ownership’ over the strategic-

²¹⁴ Interview #35.

²¹⁵ Interview #35.

²¹⁶ While the initial idea was to take stock of the exercise once a year (European Council, 2010b), the anticipated discussion at the October 2011 European Council meeting did not take place, as the ‘Eurocrisis’ hijacked the agenda (#35). The topic was back on the agenda in October 2012, where an exchange of views was held. To follow up on the issue, the preliminary agenda of the upcoming European Council meetings included separate discussions on individual strategic partners. Also in October 2012, the European Council discussed China, and in March 2013 an exchange of views was held on Russia. Repeatedly, however, the item dropped from the agenda. Similarly, the issue of a strategic partnership with the US for example was put on the tentative agenda for the heads of state or government for the May 2013 European Council, postponed to the June 2013 European Council, and then dropped altogether. Heads of state or government made plans in 2013 to have a session on strategic partners in May 2014, however the May 2014 European Council was cancelled completely, due to the European Parliament elections taking place in the same month.

²¹⁷ Interview #32.

²¹⁸ Interview #42.

²¹⁹ Interview #39.

partnerships exercise.²²⁰ The subsequent disengagement of relevant actors, as well as the disinterest of the member states, drove the process into “quicksand”.²²¹ Strategic partnerships were no longer among the “top five priorities” of the member states.²²²

In the case of a possible update of the ESS, the member states even failed to delegate a mandate to the High Representative. While some member states – Sweden, Finland, Poland, Italy and Spain – were in favour of a new strategic exercise, the idea of drafting a comprehensive strategic document did not get the same support as back in 2003. In particular, France and Germany hesitated to launch a new strategic debate (Helwig, 2013; Kempin and Overhaus, 2012). At the Gymnich meeting in March 2012, the member states decided against tasking the High Representative with an update of the ESS.²²³ Instead, a group of four member states agreed to commission their national think tanks to work on elements of a European Global Strategy (EGS), which were presented in May 2013.²²⁴ Until the end of the first term of the High Representative, the EGS remained an academic exercise and the elements presented by the think tanks had difficulty gaining any traction in the unfavourable environment without a catalyst, such as an international crisis (Lundin, 2012). It was clear that the appetite for a significant strategic debate was very low among the member states.²²⁵ The High Representative had no mandate to write a new strategic document.

The fix-it approach

As we have seen, the High Representative’s more prominent role in formulating a strategic doctrine was limited due to failed delegation. Given the conflicting preferences and missing political will of the member states to develop broader strategic objectives, the High Representative thus resorted to a “fix-it approach”.²²⁶ From this perspective, the EU was a toolbox, which was only used if its instruments

²²⁰ Interview #35.

²²¹ Interview #42.

²²² Interview #51.

²²³ Interview #43.

²²⁴ Unfortunately, the presentation day coincided with a Foreign Affairs Council meeting, which saw member states’ disagreement over the continuation of the arms embargo on Syria, and once again showcased the challenges of a common foreign policy.

²²⁵ Interviews #42, #49, #41, #43, #44.

²²⁶ Interview #44.

fitted the priorities of the member states. Extensive strategic debates were either not initiated (update of the ESS), or not followed up (strategic partnerships).

The case of the ESS seems like a textbook example of a failed EU foreign policy initiative. Conflicting preferences did not lead to unintended discretion on the part of the High Representative (as H1 would suggest). Instead, because of the non-compulsory nature of EU foreign policy, disagreement among the member states prevented them from delegating the authoring of a new strategy to the High Representative, and left Ashton with no discretion. On the other hand, the case of the strategic partnerships challenges the theoretical framework of this thesis. The member states delegated a review of the strategic partnerships to the High Representative, and the undetailed mandate – in theory – offered plenty of room for Ashton to promote the so-far ambiguous concept. Meanwhile, she allowed other actors only limited oversight with respect to the actual progress of her work on the strategic partnerships. It was exactly this secrecy and detachment that led to dissatisfaction and unease on the part of the member states and the Commission. In the case of the strategic partnerships, the High Representative's discretion had the unwanted and counterproductive side effect of a loss of 'ownership' by the relevant actors, which partly contributed to the slow death of the instrument.

It can be concluded that the sum of Lisbon's institutional innovations (the EEAS, the 'double-hat' and the permanent chair of the Foreign Affairs Council) had little influence on the strategic capability of the EU. The successful drafting of the 2003 ESS showed that, 10 years earlier, the degree of institutionalisation was not determining the discretion of Solana; rather, the political will of the member states (especially of the 'big three'; Germany, France UK) and the structure of the informal process allowed him discretion. Bailes (2005: 12) concluded that what stood out from the drafting of the ESS was

“the confidence placed by EU members in Solana and his team; the self-restraint shown by states when they refrained from quibbling before the [...] publication of his text, or from prolonging and over-complicating the phase of intergovernmental redrafting; and the novel and rather

successful use made of intellectual resources in the European (and partner countries') security research community."²²⁷

While Catherine Ashton could not show off a similar success story, the post-Lisbon set-up started to replicate the successful informal working procedures. It follows that the Gymnich meetings became the main forum for the High Representative to conduct more strategic discussions among the ministers. Co-chaired and hosted by the member state holding the rotating Presidency, the meetings provided a more informal opportunity to think 'outside the box'.²²⁸ In addition, the Political Affairs Departments of the EEAS included a small unit for strategic planning. The unit represented a mix of former Commission and Council staff, as well as national diplomats, and provided advice to the Corporate Board and the EEAS Political Director Helga Schmid. Its assets were its informal connections, such as regular meetings with the national policy planners of the foreign ministries in Brussels. The unit also maintained contacts with the strategic units of the Commission, such as the in-house think tank Bureau of European Policy Advisors (BEPA)²²⁹ and a newly established trade strategy unit.²³⁰ The set-up thus provided a first nucleus from which a strategic EU foreign policy network might grow.

6.3. The High Representative as a crisis manager

A crisis manager on paper

The bulk of the institutional reform was designed to make the EU's structures fit for crisis-management tasks (Blockmans and Wessel, 2009). On paper, the new provisions seemed promising. Given the post's central institutional location, the High Representative became the linchpin of crisis situations. The capacity of the High

²²⁷ The process, at that time under the supervision of Solana, was structured in three phases: (1) a drafting phase amongst a closed circle of key individuals that produced a short, non-bureaucratic text, (2) a public consultation phase with three conferences at European think tanks, (3) A closed consultation phase involving the member states and the Commission (see Bailes, 2005).

²²⁸ The Gymnich meetings are designed to provide a setting for frank discussions. As they take place in the member state holding the rotating Presidency, the foreign ministers can meet in an atmosphere that differs from that of the meeting rooms in Brussels. Only the ministers are allowed in the room, and the European Correspondent of the EEAS is the only official. The member states' European Correspondents wait in the neighbouring room. After a session, the EEAS European Correspondent briefs his national colleagues on the discussion of the ministers. No formal decisions or conclusions are made (#51).

²²⁹ Bureau of European Policy Advisers.

²³⁰ Interview 42#.

Representative to summon Union foreign ministers for emergency meetings was introduced with the Lisbon Treaty.²³¹ Meanwhile, the post allowed the possibility of working closely with the standing group of PSC ambassadors in Brussels.²³² Moreover, the High Representative's competences in civilian or military crisis operations were strengthened, giving the post (together with the Council) overall responsibility over CSDP missions,²³³ and the formal right to propose new operations.²³⁴ In the early phase of a crisis, the prevention of conflicts through diplomacy has, since Lisbon, been in the hands of the High Representative, and is not carried out by the rotating Presidency, which brings the potential benefit of improved abilities to engage with international partners. Finally, it was envisaged that the High Representative would coordinate the whole range of instruments under the remit of different crisis-management players – for example, the different short-term humanitarian, as well as long-term development, instruments in the Commission. Catherine Ashton did not have to wait long for the first stress-test of the new crisis-management provisions.

*First moves in the Libyan crisis...*²³⁵

The first test for the EU's capacity to react to a crisis situation in the post-Lisbon framework was the unfolding conflict in Libya in early 2011. All of the elements that characterise a crisis (urgency, threat and uncertainty) were present. Decisions had to be made swiftly, since, at the beginning of the conflict, developments were unfolding quickly on the ground. First reports from major news outlets on clashes between protesters and government forces were reported on 18 February 2011 (BBC, 2011; The Guardian, 2011). Only one month later, on 19 March, NATO began its military air force operation. The time for immediate crisis-management was thus very short. The Libyan crisis also posed a potential threat for the EU. The country's geographic position in the immediate southern neighbourhood exposed Europe to negative

²³¹ Within 48 hours or less – see Art. 30(2) TEU.

²³² The idea behind the possibility of working closely with ministers and ambassadors was to enable the EU foreign policy chief to mobilise the assets of the member states in crisis situations. See, for instance, Solana's address to the Convention on the future of Europe, WD 8.

²³³ The Political and Security Committee exercises the political control and strategic direction of the crisis-management operations under the responsibility of the High Representative and the Council. See Art. 38 TEU.

²³⁴ Art. 42(4) TEU.

²³⁵ This subsection draws on Helwig (2013).

external effects arising from instability in the region. In the short term, these effects presented risks for European citizens in the country, as well as increased migration movements (see European Council, 2011). In addition, the crisis contained an element of uncertainty. Former Head of the Libyan state, Muammar Gaddafi, had been an active partner for the member states, and a source of stability who had cooperated in the fight against terrorism and illegal migration. It was not at all clear how a post-Gaddafi Libya could or should be organised.

How much discretion does the High Representative have during the phase of immediate crisis-reaction? The general assessment of commentators of the EU's performance in this situation was rather negative. Too slow, weak and incoherent was the reaction of the EU and its member states (Koenig, 2011; Kundnani and Vaïsse, 2011). The High Representative was also criticised for her lack of profile during the crisis (Castle, 2011). However, a closer analysis shows that the High Representative had limited discretion as a crisis manager in this situation.

At the beginning of the crisis, the High Representative issued declarations on behalf of the EU, which condemned the use of force against protesters. On the question of "an immediate end to the use of force", the member state positions were aligned, making a quick reaction using EU declarations possible.²³⁶ However, the continuing escalations of the conflict prompted the EU to take further actions against the regime. The EEAS had already started to prepare targeted sanctions at an earlier point in the conflict (Ashton, 2011). Shortly after the corresponding decision of the UN Security Council, the EU was the first entity to impose sanctions on the Gaddafi regime.²³⁷ Again, swift action was possible as the member states were on the same page on this issue, and there was no need for further discussion at the foreign-ministers level.

Even though some questions arose around Italy's ties to Gaddafi, as well as those of its Prime Minister, Silvio Berlusconi (Babington, 2013), a top-level diplomat said that the meetings of the PSC showed that all member states were aligned in the opinion that Gaddafi had to resign.²³⁸ The clear assertion of this common goal in the

²³⁶ The two declarations, from 20 and 23 March 2011²³⁶ (6795/1/11 and 6966/1/11), were cleared through the use of the network of EU Correspondents and the PSC.

²³⁷ 7081/11.

²³⁸ Interview #9.

PSC gave the High Representative the mandate on which she could base her activities. During this phase, she was particularly engaged in crisis diplomacy, and coordinated with the relevant interlocutors, including NATO Secretary-General Anders Fogh Rasmussen, UN Secretary-General Ban Ki-Moon, and US Secretary of State Hillary Clinton (Ashton, 2011).

... and the limits as a crisis manager

Parallel to coordination with international partners, the High Representative and the EEAS also had to organise their activities with the Commission, which is in charge of humanitarian aid assistance and the civil protection mechanism.²³⁹ This proved challenging. An official of the Humanitarian Aid and Civil Protection department of the European Commission (DG ECHO) explained:

“we are not going to make humanitarian aid decisions subject to a political coordination led by the High Representative [...]. If we wait until all of this coordination is endorsed by member states in the PSC we have probably a couple of hundred or thousands of people dying.”²⁴⁰

Consequently, interviewees in DG ECHO were of the opinion that the coordination role of the High Representative did not cover humanitarian aid coordination.²⁴¹

Nevertheless, the EEAS insisted on its coordination role in crisis-response situations that have a political dimension. Given the political nature of the crisis, DG ECHO had to cooperate with the EEAS. The cooperation consolidated the new crisis platform as the main coordination instrument for crisis response. Chaired by the Secretary-General of the EEAS, or, in its absence, by the Managing Director for Crisis Response (occasionally also by the High Representative),²⁴² the crisis platform brought together relevant actors from Commission DGs²⁴³ and from EEAS crisis-

²³⁹ In the case of the Libyan crisis, the humanitarian assistance and civil protection activities of DG ECHO, together with the member states, had funding of 158.8 million Euro (European Commission, 2012).

²⁴⁰ Interview #33.

²⁴¹ Interviews #33, #34. The autonomy of humanitarian aid delivery is further ensured by its separate crisis-management structures, such as the 40-plus field offices around the world. These structures coordinate their activities locally, as well as directly with the counterparts in the member states.

²⁴² In the case of a natural disaster with less prominent political implications, DG ECHO calls in and chairs similar meetings, as was the case after the tsunami in Japan.

²⁴³ Service for Foreign Policy Instruments, DG DEVCO, DG ECHO, and Home Affairs.

management structures,²⁴⁴ as well as respective geographic desks. Still, DG ECHO perceived the crisis platform as a channel through which to share information on its activities, rather than a way to be told what to do by the EEAS.²⁴⁵ The discretion of the High Representative was thus limited through agent competition with the crisis response structures in the Commission.

Another limitation with respect to the High Representative's room for discretion was the growing disagreement among the member states, particularly with reference to the question of erecting a 'no-fly-zone' over the Libyan territory, and the recognition of the Libyan opposition as a legitimate interlocutor. As a consequence, the decision-making responsibility shifted to a higher level, and the heads of state or government took over the show. A PSC ambassador explained the situation as follows:

*"Catherine Ashton realized from the discussions we already had and from the different political statements that there were huge differences between the member states about how we had to get involved in the Libyan situation. So she was definitely right to put the issue on the level of the European Council."*²⁴⁶

Following this decision, the High Representative and the EEAS (as well as, to some extent, the national foreign ministers and their ministries) were sidelined. The European Council convened at the request of France, and in spite of some wariness from the side of Germany.²⁴⁷ While Britain and France wanted a strong statement on the issue of the no-fly-zone over Libya (Cameron and Sarkozy, 2011), the High Representative, Germany, and other member states were less inclined to go as far.²⁴⁸ The conclusions of the European Council represented a compromise, and stated that "in order to protect the civilian population, member states will examine all necessary options, provided there is a demonstrable need, a clear legal basis and support from the region" (European Council, 2011), which essentially meant a positive vote by the UN Security Council and support by the African Union and Arab League.

Another dividing issue concerned recognition of the National Transitional Council

²⁴⁴ CMPD, Civilian Planning and Conduct Capability, EU Military Staff, Intelligence Analysis Centre.

²⁴⁵ Interview #33, #34.

²⁴⁶ Interview #9.

²⁴⁷ Interview #2.

²⁴⁸ Interview #9.

(NTC) as the political interlocutor in Libya. The member states were divided with respect to whether, and to what extent, they should recognise the opposition group. While France pushed ahead and recognised the NTC as the sole legitimate representative of the Libyan people, other member states were more cautious (Koenig, 2011). Instead of taking a position, the High Representative waited for the member states to align their preferences. This became especially obvious during the EP plenary session on 9 March 2011. A delegation of the NTC happened to be in Strasbourg on an invitation from the liberal group at the same time as Catherine Ashton. While it was not expected that she would politically recognise the Libyan opposition group when the member states themselves were struggling to find a position, she was asked to meet with them. Ashton was hesitant but, after long deliberations, a meeting was arranged. As an EP official recalled: “we had to bring them secretly to Ashton. After two hours she decided to admit to the press that she met them”.²⁴⁹

Two days later, under the pressure of France and Britain, the European Council recognised the NTC as the EU’s political interlocutor in Libya (European Council, 2011). For MEPs, the reason for Ashton’s wariness was that she wanted to wait for the member states to take a clear position.²⁵⁰ However, an EEAS official identified the High Representative’s cautiousness as her way of behaving diplomatically. While public statements and actions could be attractive for the media, they might be harmful for the furthering of diplomatic activities; instead, the High Representative preferred private diplomacy, which did not reveal the actions, aims and position of the Union to all audiences.²⁵¹ However, in this case, France and Britain preferred the public support of the Libyan opposition over Ashton’s quiet diplomacy behind the scenes. Ashton thus had no control over the diplomatic strategy of the Union in this crisis.

After the European Council conclusions in March, the Libya issue moved out of the remit of the EU institutions. France, the UK, and, after initial hesitation, also Italy, allied with the US and imposed a no-fly-zone after the positive vote of the UNSC.

²⁴⁹ Interview #23.

²⁵⁰ Interview #23.

²⁵¹ Interview #47.

The decision concerning an EU military operation to support humanitarian aid for Libya, made by the Council on 1 April 2011 based on a formal initiative by the High Representative, was a success only on paper. The EU did not receive the necessary request for its operationalisation by the UN Office for the Coordination of Humanitarian Affairs (Helwig, 2013).

Facilitator without discretion

The nature of a crisis places a PA relationship into a specific context of uncertainty, urgency and threat. Under these circumstances, the hypotheses suggests that the agent has unintended discretion available for its activities. The collective principal's conflicting preferences in times of urgency (H1), given the time pressure to arrive at a common position (H3), should theoretically lead to wider room for discretion for the agent. Crisis situations in general imply that the principal's ability to control the agent are limited, as the urgency and uncertainty of a crisis situation does not allow for a detailed, rules-based mandate for the agent (H2). However, the case of the immediate EU response to the Libya crisis showed limited discretion for the High Representative.

The first reason for the lack of discretion was the inability of the member states to delegate. In the intergovernmental sphere of international crisis-management, the High Representative's actions need to be based on a mandate. The division between member states on the question of how to get active in Libya led to a situation in which the High Representative was sidelined and the heads of state or government took over. Without a *specific* mandate to act on their behalf, the High Representative cannot have discretion.

Second, one could argue that the High Representative does not need a specific mandate from the member states. The function of the High Representative implies being in contact with international interlocutors, and representing and discussing policy choices. However, even as the High Representative has this *general* mandate to represent and coordinate EU foreign policy, the discretion of the post in a crisis situation is constrained. The possible sanctioning of unwanted behaviour by the member states hangs over the High Representative like the Sword of Damocles. The

control of the member states over the High Representative does not imply that they have to formulate detailed mandates or closely observe the High Representative's activities. Given the missing specific mandate of the High Representative in this crisis situation, Ashton anticipated the political damage that could result from unauthorised activities (such as the political recognition of the Libyan opposition).

A third reason for the limited discretion of the High Representative is agent competition with the Commission. The division of competences between the humanitarian aid structures of the Commission and the crisis-management structures of the EEAS is not clear-cut. It is difficult to identify whether a crisis is more political in nature, is a natural disaster, or is a mixture of both; however, the answer determines who is in charge of coordination. Furthermore, even if the crisis has a political nature, humanitarian aid actors want to maintain their autonomy. A Commission official described this situation as it occurred in Libya:

*“you have a conflict so it's obvious you have a political situation, so you need the different political and security tools of the EU. But at the same time humanitarian assistance by its mandate and priorities keeps its independence.”*²⁵²

Vaguely defined competences and diverging policy objectives create agent competition between the Commission and the High Representative, and limit the discretion of the post.

The findings of the Libya case show that a supranational agent, such as the High Representative, only has limited discretion in crisis situations, but acts as a facilitator for the member states. However, even without supranational agency, the legacy of the first High Representative shows where the added value of a common crisis-management structure lies. More than the individual member states, the High Representative and the EEAS can offer a comprehensive answer to a crisis situation. Within the cycle of a conflict, the comprehensive approach of the EU has the possibility to apply different instruments, ranging from immediate humanitarian aid and stabilisation efforts, to long-term peace-building, development and trade

²⁵² Interview #34.

policies.²⁵³ While pre-Lisbon High Representative Solana was still focused on CSDP, the EEAS can potentially draw on wider resources. A former Solana staff member explained:

*“CSDP was our big toy. Structurally it will take a while until people from the Commission start thinking about CSDP, or people from the Council start thinking about assistance policies. But we have to realize they are our policies.”*²⁵⁴

6.4. Communicating EU positions

The aim of the Lisbon Treaty was to increase the visibility of the EU, and it assigned the High Representative the role of representing the Union. Pre-Lisbon, the rotating Presidency represented the Union on CFSP matters, while the High Representative was only assisting the member state holding the Presidency.²⁵⁵ The new treaty put the High Representative in charge of EU foreign policy and muted the rotating Presidency on the international stage.²⁵⁶ However, the High Representative had to share the space with a number of other EU-level actors, such as colleagues in the Commission that speak on integrated policy aspects, and the new President of the European Council representing the Union at the level of heads of state or government. The High Representative’s ability to communicate on behalf of the Union is thus potentially constrained by member states’ control and competition with other EU level agents.

The new communication system

Even though the High Representative had various informal and formal opportunities to speak and conduct diplomacy in the name of the Union, this section concentrates on the formal instruments of third-party communication. At the start of her term, the High Representative installed a new hierarchical communication system (see Table 6.1.). The rotating Presidency lost its function of representing the Union on CFSP

²⁵³ The latest effort to articulate the EU’s comprehensive approach was a joint communication of the High Representative and the Commission in December 2013, which outlined the use of joint instruments and the shared responsibilities of EU-level and member-state actors in reaction to crises. The communication is based on previous experience of EU engagements in the Horn of Africa, the Sahel and the Great Lakes (see JOIN(2013) 30 final).

²⁵⁴ Interview #3.

²⁵⁵ Art. 18(1,3) TEU Nice.

²⁵⁶ Art. 18(2) TEU.

matters, and thus the High Representative could choose between a wide range of channels, such as declarations on behalf of the Union, personal statements, and spokesperson statements. Moreover, EU delegations had the possibility to issue local statements and démarches. The instruments have different drafting processes and were used for different purposes.

Type	Sender	Drafting process	Purpose
Declarations by the High Representative on behalf of the Union	EU: “The EU condemns/is concerned/welcomes...”	MS involved via COREU/unanimity decision	Define new policies
Statements by the High Representative	High Representative: “I condemn/am concerned/welcome...”	Without consultation of the MS, but based on previously agreed policies	Representation of existing policies
Statement by the spokesperson of the High Representative	High Representative: “The High Representative condemns/is concerned/welcomes...”	Without consultation of the MS, but based on previously agreed policies	Reiterate statements made by the HR; address less salient issues
Local statements	EU delegation: “The EU delegation issues the following statement in agreement with the EU heads of mission in [host country].”	Coordinated by the EU delegation on the ground with the national delegations represented in the country	Country-specific statements
Démarches	EU. Carried out by EU delegation, or member state, or both.	EEAS or member state initiative; EEAS drafts text and instructions; member states involved via COREU	Private communication

Note: COREU = Correspondance Européenne.

Table 6.1: Communication instruments (author’s own compilation)

The two main communication channels – declarations and statements – both left the High Representative with limited discretion. The lack of discretion is most obvious with regard to declarations on behalf of the Union. These are usually agreed through exchanges via the COREU network, or discussions in the PSC. All member states have to agree on the text; thus, member states had tight control over the drafting process. There was a reason for the close participation of the member states: declarations were always used to formulate new policies. They were not based on previously agreed EU positions, and were thus under intense scrutiny by the member state capitals.²⁵⁷

Nevertheless, the personal statements of the High Representative also did not leave much discretion for Ashton to speak freely. Even though statements always use the

²⁵⁷ Interview #47.

first-person singular, they represent the positions of the Union as a whole. The High Representative can issue them without consulting the member states, which makes them quicker and easier to issue. However, according to an EEAS official, the press team in the service made sure that the statements were in line with the agreed policy of the Union defined over previous years in declarations and conclusions, as well as with “relevant individual member state positions”.²⁵⁸ The effort that was put into aligning the statements with EU and member states policies can partly be explained by the rather risk-averse approach of Catherine Ashton. However, diplomats and EEAS officials involved in the process pointed out that future High Representatives will also be constrained by the agreed policy lines.²⁵⁹ Therefore, member states still have a forceful *ex ante* control over the personal statements of the High Representative.

Statements instead of declarations

The High Representative has been very engaged in communicating the positions of the EU. The High Representative counted 504 statements in the period 1 January – 9 November 2011, including:

- 78 Declarations on behalf of the EU,
- 279 Statements by the High Representative,
- 102 Spokespersons’ statements and
- 45 Local EU statements (High Representative, 2011).

In addition, the EU carries out around 200 *démarche* campaigns per year, including larger ones that go out to more than one recipient.²⁶⁰

A closer analysis reveals that the patterns of communication have changed (Helwig et al., 2013). The High Representative used intensively personal statements, while the number of declarations on behalf of the Union dropped (see Figure 6.1). Before

²⁵⁸ Interview #47.

²⁵⁹ Interviews #47, #6. This is in line with the general approach taken by EU representatives. The reference handbook of EU external action officials, the vade mecum on the external action of the Union issued by the Secretariat of the Commission, states that “[d]epending on the subject matter concerned, the EU position to be defended in any international forum is the position which flows from EU legislation or policy or from Conclusions (Resolutions) of the European Council or of the Council” (SEC(2011)881, p.20).

²⁶⁰ Interview #47.

the Lisbon Treaty, the rotating Council Presidency was in charge of declarations and had an additional incentive to issue them in order to boost its international profile. However, Ashton could more easily issue personal statements, and only resorted to the more lengthy process of formulating a declaration together with the member states if there were no prior policy lines. However, the fact that more messages were issued on behalf of the High Representative does not mean that she had more discretion in their formulation, as described above. The statements of the High Representative fell within the predefined policy lines of the member states.

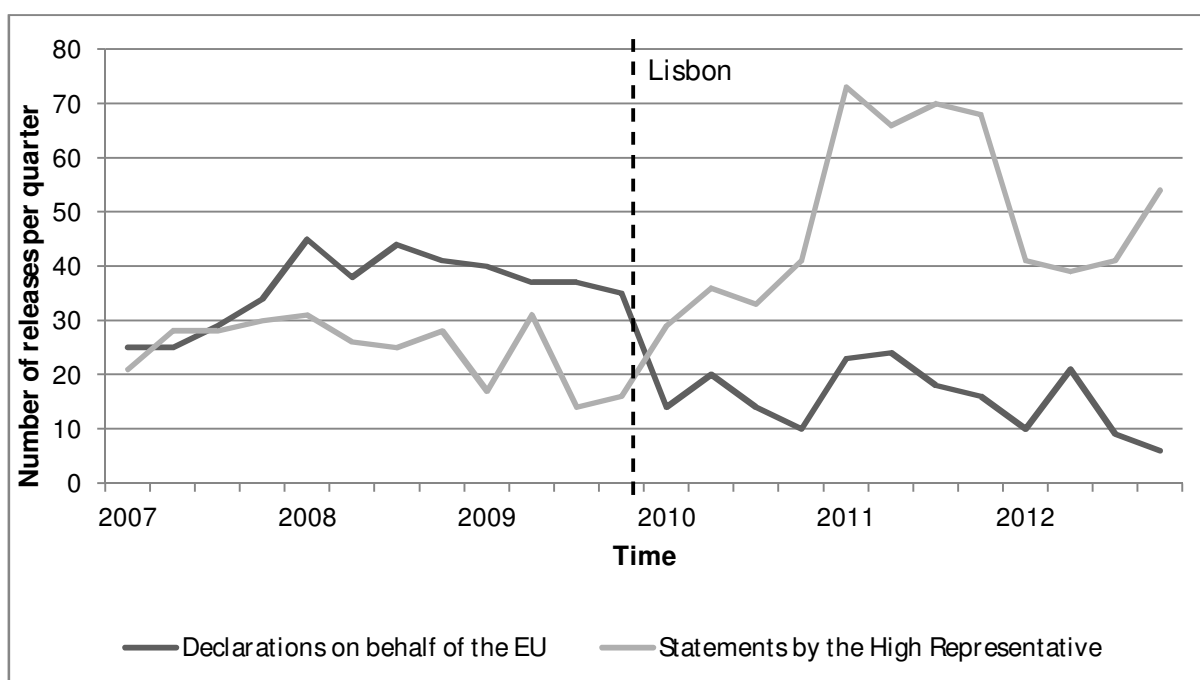


Figure 6.1: *Declarations and Statements* (source Helwig et al., 2013)

EU cacophony

The High Representative was not the only voice of EU-level diplomacy, even though the Lisbon Treaty combined the external communication functions of the Relex Commissioner, High Representative and rotating Presidency in one post. Several EU-level agents competed for the attention of international and EU audiences. In theory, the competences of the Commission President, European Council President and High Representative are delimited: the High Representative and the European Council President speak on CFSP at the level of either the foreign minister, or heads

of state or government, while the Commission President and other Commissioners speak on non-CFSP matters. At an administrative level, competences are divided between the Commission services and the EEAS headquarters. On the ground, the Union delegations represent all EU actors (see Table 6.2).

CFSP		Non-CFSP	
		External action (part five TEU)	External action of sectoral policies
Heads of state or government level	President of the European Council	President of the Commission	
Ministerial level	High Representative	Commissioners (including the High Representative acting as Vice-President)	
Administrative level	EEAS	Commission services EEAS HQ services	
In third countries/at international organisations	----- EU Delegations -----		
No role for the member state holding the rotating Presidency in EU external representation (unless acting on behalf of the High Representative)			

Note: TEU = Treaty on European Union.

Table 6.2: Representation of EU external action (source SEC(2011)881)

In practice, however, the lines were blurry and gave space for agent competition. This was partly due to an unclear hierarchical division of competences between the President of the Commission and the High Representative as its Vice President. The High Representative undoubtedly had the competence to speak on matters of CFSP without any guidance from superiors in the Commission, as the Commission had no competences in this policy field. However, competences were overlapping when Ashton spoke in her role as Vice President of the Commission. Here, the Commission President “with the exception of CFSP, and other cases provided for in

the Treaties [...] shall ensure the Union's external representation".²⁶¹ Hence, it was usually the central press service of the Commission that provided guidance to the speakers of Commissioners. However, the double-hatted set-up of the High Representative caused confusion: in practice, it often remained unclear as to whether Ashton's statements were made under the hat of the CFSP or the Commission, and thus her press team was in large part not subject to coordination by the Commission press service.²⁶²

During Ashton's term, coordination between the press services of the High Representative, the Commission President and the President of the European Council remained challenging. In the case of the crisis in Libya, all three entities issued similar statements on the latest developments in the Southern neighbourhood (Koenig, 2011). Even though the statements did not contradict each other in substance, they arguably left the global audience and media puzzled about the importance of each individual actor: a single voice in EU foreign policy remained an illusion (Busse, 2011). As explained by a high-ranked member state diplomat, the reason for the multitude of voices was simple and unavoidable:

*"we live in an age of Twitter and constant media interaction. If Barroso or Van Rompuy are asked to give a statement on a particular issue, they cannot afford to not give a statement."*²⁶³

Only in cases where there was time to coordinate in advance did the press services of the actors manage to divide the responsibility among themselves.²⁶⁴ This was especially the case if a diplomatic line could be followed. For example, on the occasion of Obama's re-election in November 2012, the Presidents of the Commission and European Council issued a joint congratulation message,²⁶⁵ while the High Representative congratulated John Kerry on becoming Secretary of State.²⁶⁶

Thus, the Lisbon Treaty did not change the multitude of voices, and left the possibility for several EU-level agents to speak on the same issue. Nevertheless,

²⁶¹ Art. 17(1) TEU.

²⁶² Interview #32.

²⁶³ Interview #9.

²⁶⁴ Interview #47.

²⁶⁵ MEMO/12/841.

²⁶⁶ A 592/12.

there was no clear sign that the agent competition would constrain the discretion of the High Representative in her communications. As all statements issued by EU-level agents (except those of the President of the EP) have to be based on the agreed policy lines of the member states, they were not hugely contradictory in their content. The EU-level agents' discretion over the issuing of statements was therefore limited not so much by agent competition, but rather by the preferences of the member states on which all of the statements were based.

A spokesperson for the member states

The High Representative and her press team in the political affairs department of the EEAS had little discretion over the content of communication. Declarations and statements are either drafted and agreed upon by all member states, or firmly based on pre-existing policy lines. The amount of ongoing control and anticipated *ex post* sanctioning is high, thus ruling out any unintended discretion (H2). The officials fear to send out a political message in the name of the High Representative that would *ex post* be criticised or corrected by member states and thus lead to a loss of reputation of the High Representative. An EEAS official commented that even though "member states are bound as well by the treaties to act in line with the EU position, they can act more freely".²⁶⁷ As a consequence, member states sometimes reveal their own public position very quickly, while the EEAS is still working on a common statement.

This observation is largely in line with the general argument of the thesis that the increase of the High Representative's institutional authority is not necessarily increasing the incumbent's discretion over foreign policy content. Pre-Lisbon High Representative Solana's discretion on some policy areas has been well-documented by previous research (Aggestam et al., 2008: 42–47; Crowe, 2005: 14–18; Dijkstra, 2011a), which shows that Solana's authority over certain policy issues significantly depended on the region in question, and the characteristics of the rotating Council Presidency under which he worked at the time. The Western Balkans is the classical example, where Solana gained such a high profile and notable expertise that rotating Presidencies and other member states stepped back and left the stage for the foreign

²⁶⁷ Interview #47.

policy chief. Solana himself admitted: “I don’t have to check everything with everyone. I would rather have forgiveness than permission. If you ask permission, you never do anything” (Crowe, 2005: 15). In the interviews for this study, a press person from Solana’s team recalled that Solana ‘owned’ certain portfolios:

*“He created certain policies, such as the EU’s policy towards the Western Balkans, and member states trusted him on these. If a statement was needed in a subject he was personally very involved in, his margin was very wide.”*²⁶⁸

However, he was also more prudent on other topics, and was careful not to overstretch the trust of the member states on issues that he pioneered: “one wanted to break ground with the statements, but not too much”.²⁶⁹

A similar discretion on foreign policy statements cannot be observed under Ashton’s legacy. This might be partly due to the characteristics of the incumbent, who prefers a soft, “quiet diplomacy” (Rüger, 2011: 224), had less foreign policy experience when entering the post, and developed an EEAS, which is – like her – “much more risk-averse”.²⁷⁰ However, a sole focus on the personality of the High Representative falls short in explaining the loss of discretion. The analysis here suggests an explanation based on the institutional set-up. Pre-Lisbon High Representative Solana had discretion on foreign policy communication and diplomacy not *despite* being subordinate to a rotating Council Presidency, but *because* he had the rotating Presidency as a fixed member state interlocutor and direct principal. Although it was true that the rotating Presidency was able to take over the show and sideline the High Representative, it could also give deliberate discretion to Solana to manage entire portfolios or specific policy questions. Presidencies happily delegated the tedious and time-consuming Western Balkan and Middle-East portfolios to Solana (Aggestam et al., 2008; Crowe, 2005). Post-Lisbon, with a muted rotating Presidency on CFSP matters, the High Representative received full authority to represent CFSP; however, permission is needed from all 28 member states in the Council in order for the High Representative to act.

²⁶⁸ Interview #3.

²⁶⁹ Interview #3.

²⁷⁰ Interview #50.

The authority of the post-Lisbon High Representative came with control of the post's activities by all member states, which arguably left the High Representative with less discretion than before. Meanwhile, Ashton's 'Commission hat' did not have the desired effect: a widespread perception amongst interviewees in this study was that she predominantly focused on her role as High Representative, and too rarely played the Commission Vice-President card. Speaking in the name of the Commission could, however, allow for discretion with respect to bolder statements.

Conclusion

The first years of the revamped post of EU High Representative did not grant much discretion to the incumbent, Catherine Ashton. While the Lisbon Treaty created a potentially strong actor on paper, the actual performance indicates that EU foreign policy remained tightly in the hands of the member states. The member states created an agent, however, they did not delegate authority to the post. Without clear mandates, the High Representative was a constrained agent.

What conditioned the discretion of the High Representative? Conflicting preferences among the member states' principals had an effect on the High Representative's room for manoeuvre; however, in contrast to H1, and to what the PA literature would predict, conflicting preferences among the principals did not enable the agent to exploit the differences and to follow a personal agenda. The fact that the High Representative continuously needed new mandates on which to base her actions changed the PA dynamics in favour of the member states. For them, common EU actions are just one option among several. Therefore, conflicting preferences led to missing delegation, and often left the High Representative without mandate. For example, Ashton received no mandate to update the ESS, nor did she have a common EU position to represent during the Libya crisis. A different, but equally constraining, effect was witnessed in the agenda-management of the Foreign Affairs Council: here, the multitude of preferences among the member states overloaded the High Representative's mandate and led to an often unfocused agenda. The evidence suggests that the PA approach in the field of supranational agency has room for refinement: conflicting preferences in the anarchic international system – in which

agents beyond the states do not have their own legitimate authority base – are likely to cause failed delegation.

The evidence collected for this chapter also suggests that the High Representative had no deliberate discretion because of the tight control and oversight mechanisms used by the member states. This observation supports H2. The control and sanctioning mechanisms, which constrain the agent from running loose, were thereby less explicit and could only be revealed via careful process-tracing and expert interviews with practitioners. The hesitant reaction of Ashton to the crisis in Libya, which was often portrayed in the media as a missed chance “to seize the international spotlight” (Castle, 2011), was rather conditioned by the member states’ anticipated sanctioning of overly bold and unwanted actions from Ashton. Taking a position on the no-fly-zone that was not in line with the view of some of the member states, could have led to informal sanctions against the High Representative, for example through public criticism or further side-lining of her role in the crisis. While a risk-averse mindset of the agent might be a crucial factor here (and should be conceptualised and analysed in future studies), the agent’s discretion was in this case significantly limited by the member states’ control over a high political-crisis situation. With regard to the statements of the High Representative, the control of the member states was also indirect. Even though the member states were not consulted for the High Representative’s statements (and hence not exercising ongoing control), the discretion of the statements was limited through the acquis of previously agreed policies.

The enhanced, but also complex, institutional structure of the EU foreign policy machinery, which installed the High Representative as the Commission Vice-President, did not bear fruit. It proved difficult for the High Representative to set the agenda in the Commission. This was partly due to organisational constraints and a slow adjustment of the Commission structures to the new treaty rules; however, different policy objectives, for example in the field of humanitarian aid, were also an impediment to the High Representative’s discretion. Furthermore, competition with the Commission hindered the High Representative’s discretion as an agenda- and crisis manager.

To sum up, this chapter suggests that the new institutional structures around the post of High Representative only brought limited changes to EU foreign policy. The related policies remained a strict aggregation of the member states' preferences, and offered no deliberate discretion for the post to launch bold initiatives. On the contrary, some comparisons with the pre-Lisbon foreign policy set-up showed that the lower degree of institutionalisation of the post often allowed Solana to move more freely. Implementing the CFSP together with the rotating Presidency and based in the General Secretariat of the Council, allowed Solana to receive mandates with deliberate discretion to set own agendas. The institutionalisation of the post has increased not only the capabilities of the High Representative, but also the desire of the member states to control the post. It also intensified competition with other Commission actors. The net effect on the discretion of the foreign policy chief has – so far – been negative.

7. The EEAS review: an institutional deadlock

“It was in a word, tough.” (Ashton, 2013b)

Looking back at her first years in office, Catherine Ashton underlined that the position as EU foreign policy chief was demanding. In 2013, those who had high-flying expectations of the new foreign policy players were knocked out of the skies. While Ashton and her service had developed and managed well in the first four years under new Lisbon Treaty rules, even the optimists had to realise that the new players faced difficulties in gaining authority in Brussels, and in being accepted by the member states as a facilitator for their foreign policies. It was rather a sober environment in which the review of the EEAS was scheduled.

Meanwhile, the member states were tired by the tedious negotiations that had been carried out with respect to the EU foreign policy machinery throughout the last decade. As the analysis below will show, the discussed issues and dividing lines between the member states regarding negotiation of the Lisbon Treaty and the set-up of the EEAS were reoccurring themes. The discussions portrayed the deadlock of the institutional development of EU foreign policy. Remembering the unbridgeable differences during the European Convention, and during the set-up of the EEAS, the member states lost their determination to try to overcome this deadlock. In the following, the overall scope and process, as well as the most prominent discussions of the review, will be analysed.

7.1. Reason, structure and scope

The review as a control mechanism

The Council decision on the EEAS included the crucial provision of conducting a review of the organisation and functioning of the EEAS in mid-2013.²⁷¹ A review of an administration before its third birthday might come too early to evaluate its institutional architecture and practices. It seems unlikely that the mid-2013 date was

²⁷¹ Art. 13(3) EEAS decision.

set with the idea that a comprehensive evaluation of the new structures could be undertaken. Ashton (2013b: 1) pointed out that a review was “a long way off” at the time of the EEAS Council decision, and that “nothing had been put in place to make the EEAS a reality”. It was a widely shared view in the literature (see, for example, Drieskens and Schaik, 2010), and among those interviewed for this study,²⁷² that an institutional consolidation of the service needs more time. As one diplomat explained, the review should be seen as one step within the longer process of setting up the new service, rather than as a one-off exercise.²⁷³

Some observers preferred to look at the shortcomings of the EEAS from a policy perspective (see, for example, Balfour et al., 2012). The hope was that the review would not just involve a discussion on processes and competences, but would also “broaden the debate within Europe on the future of Europe’s role in the world” (Balfour and Raik, 2013). Indeed, the EEAS review was seen as part of a wider discussion on the EU’s strategic outlook, which had taken place in 2013.²⁷⁴ However, the specific task of the High Representative was to “provide a review on the organisation and functioning of the EEAS [...]”.²⁷⁵ The review was specifically focused on the procedures and structures, rather than on the policy outcomes.

In line with the theoretical argument of this thesis, the review can largely be seen as a possibility for the member states to oversee, control, and potentially correct the institutional set-up of the EEAS, and of the office of the High Representative. From the PA perspective, the motivation of the member states behind the review of the EEAS was twofold: first, it was installed as an opportunity to discuss open issues that had not been settled between the member states during the negotiations on the EEAS in 2010. The mandate of the High Representative had blank spots, which gave Ashton unintended discretion in the set-up of the service (see Chapter 4). The national representatives adjourned negotiations on unsettled issues to the 2013 review. For example, the member states did not agree in detail on the integration of

²⁷² For example, interviews #41, #45, #49.

²⁷³ Interview #49.

²⁷⁴ See for example the discussions during a seminar of practitioners and academics on EU security policy (Helwig, 2012).

²⁷⁵ Art. 13(3) EEAS decision

the crisis-management structures, and on the role of the EEAS in the coordination of Commission policies. Blockmans et al. (2013: 77) pointed out that

“given the originality of the EEAS in the EU institutional landscape, and the ambiguity of the provisions governing its organisation and functioning, it is unsurprising that the monitoring of the decision’s implementation, and its possible revision, were deemed necessary.”

Second, the review served as an inbuilt control mechanism for the member states. It gave them the possibility to correct developments that were not in line with their preferences. The Council decision specifically mentioned a review of the national and gender balance of the EEAS staff, of the controversial chain of command of the EU delegations, and of the programming of financial instruments.²⁷⁶ Krätke and Sherriff (2012: 4) concluded that

“[p]olitical motivations can therefore be presumed to be behind and at the core of the review, [...] it is in the stakeholders’ interest to assess, justify and (if necessary) modify the Council Decision establishing the EEAS. ”

The nature of the review was not a technical and apolitical evaluation of best practices, but rather part of a political process in which the member states tried to control the set-up of the EEAS, and of the High Representative’s office.

Who conducted the review?

The EEAS Council decision stipulated that the High Representative would carry out the review.²⁷⁷ The High Representative was thus in a powerful position as she was able to frame the discussion on the organisation and functioning of the service. In addition, the revision of the EEAS Council decision was based on the same article in the Lisbon Treaty as the initial set-up of the EEAS (Blockmans and Hillion, 2013).²⁷⁸ As a consequence, any revision of the EEAS decision had to be based on a proposal by the High Representative.

²⁷⁶ Art. 13(2) EEAS Council decision. The instruments already had to be part of a report on the implementation of the EEAS decision at the end of 2011.

²⁷⁷ Art. 13(3) EEAS Council decision.

²⁷⁸ Art. 13(3) EEAS Council decision stated, “the Council shall, in accordance with 27(3) TEU, revise the decision [...]”

The EEAS decision did not specify who had to be involved in the review, and left it to the discretion of the High Representative to decide on the procedures used during the drafting process. According to high-ranking officials of the EEAS, Catherine Ashton personally oversaw the process of writing the review report.²⁷⁹ The main document, which set out the findings and recommendations of the review (Ashton, 2013b), was written in a closed circle involving only some of her Cabinet members, though the EEAS provided input and support.²⁸⁰

In addition, Ashton (2013b: 2) thanked “delegations across the world, Brussels-based staff, Commission, Council, member states, the EP, think tanks, NGOs and individuals” for their contributions. Think tanks got involved in the process from very early on: the first publications had already emerged by the end of the EEAS’s first year (Balfour et al., 2012; Blockmans, 2012b; Duke, 2012; Hemra et al., 2011). The member states sent a letter signed by 12 foreign ministers to the High Representative in late 2011.²⁸¹ More input was to follow a year later, including another letter signed by 14 member states,²⁸² analyses and recommendations by think tanks (Balfour and Raik, 2012; Blockmans, 2012a; Helwig et al., 2013), and reports by the EP²⁸³ and the British House of Lords (House of Lords, 2013). Together with a discussion held with foreign ministers at the Gymnich meeting in Dublin in March 2013, the High Representative had a reasonable amount of outside assessment to use for the review.

²⁷⁹ Interview #46.

²⁸⁰ The Political Affairs Department played a role in this respect, coordinated with the member states ahead of the Gymnich meetings, and inter alia carried out a survey on EU delegations (#47).

²⁸¹ Joint letter from the Foreign Ministers of Belgium, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland and Sweden to the High Representative of the Union, 8 December 2011.

²⁸² Non-Paper: Strengthening the European External Action Service by the Ministries of Foreign Affairs of Austria, Belgium, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, 1 February 2013.

²⁸³ European Parliament recommendation to the High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the European Commission, to the Council and to the Commission of 13 June 2013 on the 2013 review of the organisation and the functioning of the EEAS, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-278>.

Scope of the review

The Council decision on the EEAS stipulated that the review should, “if necessary, be accompanied by appropriate proposals for the revision of this decision”.²⁸⁴ Based on this, different scopes of the review were possible. A maximalist review could have included recommendations that even went beyond the EEAS Council decision and looked into the overall functioning of the EU foreign policy architecture. The argument was that the effectiveness of the service is closely connected to its inter-institutional relations with the Commission and the Council (Helwig et al., 2013; Wouters et al., 2013). A maximalist approach included fundamental questions on the division of competences between the different actors (development cooperation in the EEAS?), on decision-making procedures (unanimity decisions in CFSP?) as well as on institutional designs (deputies for the High Representative?). However, ambitious changes required modifications to the Lisbon Treaty, and would have opened debates on the same issues that could not be settled in the European Convention. Changes to the Lisbon Treaty were highly unlikely.

Changes to the July 2010 Council decision on the EEAS were difficult to achieve. A corporate board member of the EEAS dismissed the idea: opening the long-negotiated Council decision would open ‘Pandora’s Box’, since “if one member state requests a change to the Council decision, ten others will raise their hands”.²⁸⁵ In general, the member states were not fond of the idea of renegotiating the Council decision on the EEAS. The UK in particular warned of new debates. Secretary of State William Hague, in a letter to Catherine Ashton just ahead of the Gymnich meeting on the EEAS review, wrote: “Renegotiating the 2010 Council decision would be a lengthy exercise and could detract from important work on the many pressing foreign policy issues we face”.²⁸⁶

Therefore, a minimalistic version seemed likely. In this scenario, the High Representative only had the possibility to propose changes within the existing legal framework. The EEAS Council decision did not go into detail about the internal organisation and structure of the service; hence, inter-alia suggestions could touch

²⁸⁴ Art. 13(3) EEAS.

²⁸⁵ Interview #44.

²⁸⁶ Letter from William Hague to Catherine Ashton from 14 March 2013.

upon the structure of the Corporate Board or the coordination between crisis-management and geographic departments of the EEAS. However, stages of programming cycles of financial instruments could not be changed, as they are regulated in the Council decision.

As the review got closer, it seemed more likely that the Council decision would be left untouched. A new EEAS decision was not be possible against the will of the UK.²⁸⁷ Being asked what reform she considered most important, Ashton hinted at rather limited modifications: “The most important reforms are to ensure that we have the right inter-institutional framework [...], that means being ready and willing to tweak and change things [...]” (Ashton, 2013c). Here, it became clear that all those who hoped for ground-breaking changes would be disappointed.

7.2. The High Representative moderates, the member states initiate

Ashton’s approach to the review

Catherine Ashton chose a moderating role during the review. She structured the discussions along the lines of certain themes with the member states, instead of pre-formulating a list of proposed changes to her office. Her cautiousness became apparent when she presented her non-paper for the discussion with the foreign ministers before the Gymnich meeting in Dublin in early 2013. Based on the generally subdued mood regarding the changing of the EEAS Council decision, Ashton began by clarifying the scope of the review exercise:

*“My approach is that the review should identify a programme of short-term and medium-term actions and recommendations to allow the EU and member states to use the full potential of the new service. Some-short term measures could be taken at EU level within the existing legal and institutional framework; while others may require changes to the EEAS Decision or other legislation; and some may need to be implemented as part of the next institutional configuration in 2014.”*²⁸⁸

Thus, a change to the Council decision was off the table in the short term. The focus would be on changes within the existing legal framework. However, medium-term

²⁸⁷ Interview #51.

²⁸⁸ EEAS Review – Non Paper from the High Representative, 19 March 2013.

changes to the EEAS Council decision, or to the new 2014 Commission, were still open for discussion.

Ashton continued in her non-paper with a list of issues that the review should focus on. These were based on the previous input from the member states, the EP, and preceding informal discussions. Ten points were briefly introduced, and complemented with a few guiding discussion questions (see Table 7.1). This exemplifies the High Representative's bottom-up approach: in the paper, Ashton did not express her own position on the future shape of the service to the member states. The review would be based on the input of the foreign ministries, and the discussion among the ministers. Moreover, the Commission was not involved in the review process, and thus was not able to impose its interpretation of the Lisbon Treaty on the member states. The approach fundamentally differed from that taken during the initial set-up of the EEAS, when the High Representative and the Commission negotiated side by side (see Chapter 5). Without cooperation between the EEAS and the Commission, one would expect that the member states would control the review of the EU foreign policy architecture. However, the member states still had to coordinate their position, and the potential remained for disagreements to hamper their ability to suggest concrete changes.

Annotated agenda

1. The High Representative as the CFSP Presidency
 2. EU delegations (relations with member state delegations)
 3. EU delegations (internal arrangements)
 4. EEAS support to EU institutions
 5. Relations with the Commission (High Representative as Vice-President)
 6. Relations with the Commission (Development Cooperation)
 7. CSDP/crisis management
 8. EU Special Representatives
 9. EEAS staffing
 10. Deputies for the High Representative
-

Table 7.1: Annotated agenda for the Dublin Gymnich meeting

The involvement of the member states

The review resulted in deepened cooperation between the national foreign ministries, wherein the involvement of the member states was characterised by proactiveness, coalition-building and informality. After the experience of partially losing control of the set-up process of the EEAS, the member states wanted to be proactive and make sure that their views would be fully taken into consideration this time around. The member states issued position papers early on in the process. A senior diplomat from a greatly committed member state explained that some member states did not want to wait for the first draft from the EEAS or High Representative.²⁸⁹ Afraid that they might not be asked for their opinion, the member states felt that they had to make their position heard early on in the process. As noted by one interviewee,²⁹⁰ the proposed changes should not be understood as criticisms of the High Representative, as perceived by some in the media (Rettman, 2012), but as constructive support for the EEAS review,.

Second, the involvement of the member states was structured in coalitions. The member states were divided: one group (among them Germany, as well as small and medium-sized member states) was on the whole interested in a strong EU foreign policy, and therefore wanted to use the review to make the new system work. Others (such as the UK and, to some extent, France) disengaged from the process, as they believed the limited scope of changes that were to be expected would not affect their interests.²⁹¹ The main driver of the former group was Germany. The German initiative started with the so-called ‘Majorca Group’ (named after one of their meeting spots). The high-level reflection group was initiated by the German Foreign Minister Guido Westerwelle, and comprised, next to him, the foreign ministers of Austria, Belgium, Denmark, France, Italy, Luxembourg, the Netherlands, Poland, Portugal and Spain. The final report (Future of Europe Group, 2012) had a rather visionary character, and touched on a wide range of issues concerning the future development of the EU, inter alia the strengthening of the position of the High Representative in the institutional architecture.

²⁸⁹ Interview #43.

²⁹⁰ Interview #43.

²⁹¹ Interview #43.

The positive experience of the Majorca Group prompted the idea of using the existing cooperation structure for a more detailed paper for the EEAS review. Germany started to form a homogeneous group around its aim to strengthen the High Representative.²⁹² Nevertheless, the constellation of participating states changed. France, which was part of the Majorca Group, was reluctant to participate in a joint paper for the EEAS review.²⁹³ Germany won over a couple of smaller countries for the initiative. According to one diplomat, there was interest in small and medium-sized member states joining, as they did not have the resources themselves to look into the review in depth.²⁹⁴ In the end, Estonia, Finland, Latvia, Slovakia and Sweden joined the German initiative.

Germany took the lead, and the Europe division of the Foreign Office wrote the first drafts. In a second step, the other members of the group were given the chance to add recommendations or to make amendments. The participants did not always agree with each other; for example, while Germany was outspoken about having the neighbourhood portfolio assigned to the High Representative, Finland did not perceive this as a decisive issue. However, all of the participants aimed for a strong input paper, and thus were willing to make concessions. The Group members made sure that the paper²⁹⁵ was not a ‘watered down’ compromise, but represented the maximum of what they wanted to achieve.²⁹⁶

Finally, the review process was generally informal. The review was not on the formal agenda of the Council WGs and the EP was not formally involved. EU State Secretaries and Secretary-Generals met several times to discuss the EEAS and its relations with the national administration.²⁹⁷ The decisive meeting at ministerial level was the informal Gymnich meeting on 22–23 March 2013 in Dublin. On that occasion, the EP, represented by Elmar Brok (Chair of the Committee on Foreign

²⁹² Interview #51.

²⁹³ France presented its own input paper.

²⁹⁴ Interview #51.

²⁹⁵ Non-Paper: Strengthening the European External Action Service by the Ministries of Foreign Affairs of Austria, Belgium, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, 1 February 2013.

²⁹⁶ Interview #51.

²⁹⁷ For example, on 18–19 May 2012 in Limassol, and on 17 May 2013 in Vilnius.

Affairs) was able to share its views as well.²⁹⁸ Another round of informal meetings took place in October 2013, after the High Representative presented her main points in the EEAS review paper. The October meetings included an informal Coreper ambassador lunch (18 October), an informal PSC ambassador lunch (23 October), and an informal meeting of the EU State Secretaries of the foreign ministries (24 October).²⁹⁹

The characteristics of the coordination process defined the principal's ability to control and oversee the agent. Germany used the informality of the process to form a group of like-minded states to formulate a strong position. As we will see, Germany ultimately managed to widely realise its preferences, while the High Representative had limited discretion over the content of the text.

7.3. Focus I: Relations with the Commission³⁰⁰

Different readings of the Lisbon Treaty

From the start, the relation between the EEAS and the Commission was subject to debate as a consequence of diverging interpretations of the Lisbon Treaty. The Commission took up the position that the creation of the EEAS had no impact on the division of competences among EU institutions. The Commission would still be in charge of external affairs other than CFSP and, as the EU's executive, would have authority over financial programmes. The mandate of the High Representative to coordinate the external activities of the Commission as its Vice-President³⁰¹ was acknowledged. However, it was seen as a mandate for soft coordination of the independent activities of the Commission, and not as a hierarchical order that would rank the High Representative above other external relations Commissioners.³⁰²

²⁹⁸ The discussion on the EEAS review was divided into two sessions. Brok was admitted to the first day of discussions, which already represented a comprehensive debate on the EEAS review. The second day, which was closed to the ministers and the High Representative, provided the possibility to be more outspoken (Interview #51).

²⁹⁹ Based on meeting agendas available at: <http://www.consilium.europa.eu/>.

³⁰⁰ Please note that the following points of the review that are discussed in more detail by no means represent a comprehensive list of all measures that came up in the debate. However, they are sufficient to give an overview of the main debate and help to explore the principal-agent relationship.

³⁰¹ Art. 18 (4) TEU.

³⁰² See for example chapter 6.3 on crisis management of the High Representative: humanitarian aid refused to be coordinated by the High Representative. Official of DG ECHO in the Commission rather saw the relevant coordination platform as a venue to exchange information.

Commission officials stressed the fact that the Lisbon Treaty clearly states the competences of the Commission over external representation of the Union for matters outside the CFSP.³⁰³

The member states, on the other hand, read the Lisbon Treaty in a different way. For them, the coherence of the EU's external action was the overall objective. The High Representative post, with its double-hat structure, was created in order to bring all aspects of external action under one roof. Thus, the HR/VP should have authority over all external policy aspects, and the mandate to coordinate the external activities of the Commission was stressed. However, it has to be noted that the degree to which all member states subscribed to this position varied. Some of the member states were open to a division of tasks between the High Representative/EEAS and the Commission, given the sheer breadth of external action and the heavy workload involved. The need for the political guidance of the High Representative was nevertheless undisputed. These underlying different interpretations set the frontlines on the issues discussed in the review that touched upon relations with the Commission.

Neighbourhood policy

The allocation of the neighbourhood portfolio to the Commissioner for Enlargement, Štefan Füle, raised eyebrows in the member state capitals (see Chapter 5). The move came as a surprise, because the neighbourhood portfolio had been under the remit of the Commissioner for External Relations in the previous Commission. Consequently, it was expected to be in the hands of the HR/VP under the new Lisbon rules (see also Weiss, 2010). The allocation of the neighbourhood portfolio was not regulated in the decision on the organisation of the EEAS, but rather lay in the hands of the Commission President.³⁰⁴ Nevertheless, the member states wanted to use the EEAS review to examine whether the neighbourhood policy should be reassigned to the High Representative.

Ashton approved Commission President Barroso's decision to assign the neighbourhood portfolio to Commissioner Füle. From her point of view, having a

³⁰³ Interview #48 and Art. 17(1) TEU.

³⁰⁴ See Art. 17(6) TEU. See also Chapter 6.

Commissioner in charge of the neighbourhood would enable her to share the burden of her representational duties around the world.³⁰⁵ However, Germany in particular made a strong argument for transferring the authority of the neighbourhood portfolio to the High Representative.³⁰⁶ In the German-led non-paper, the 14 member states argued that “the HR/VP (and the EEAS) should be responsible for neighbourhood policy as this constitutes a central area of European foreign policy”.³⁰⁷

The demands of Germany and others were disputable. First, they overlooked the fact that the EEAS services already managed the neighbourhood policy. Commissioner Füle did not have a neighbourhood directorate inside the Commission because all of the respective staff had moved from the DG Relex of the Commission to the EEAS. Thus, “the EEAS’ divisions dealing with the European Neighbourhood Policy became the de facto service of Commissioner Füle” (Helwig et al., 2013: 46). Second, commentators saw benefits in the established set-up. Commissioner Füle de facto functioned as Catherine Ashton’s deputy for the implementation of the neighbourhood policy, and was the “EEAS’ ally in the Commission” (Kostanyan, 2013). An EEAS corporate board member spoke in favour of the current set-up:

*“I would leave that untouched. Ashton forms a well-working tandem with Commissioner Füle. In addition, the neighbourhood Commissioner can stay in close contact with DG DEVCO [responsible for the implementation of the financial instruments in the region]”.*³⁰⁸

In her review paper, Catherine Ashton acknowledged Germany’s concerns: “Designating a Commissioner for the neighbourhood when the geographical responsibilities for these countries were transferred to the HR/VP and EEAS risked confusion” (Ashton, 2013b: 8). However, she shied away from making any final recommendation regarding the future organisation of the neighbourhood policy. The next Commission term, starting in 2014, would represent an opportunity to review the set-up.

³⁰⁵ See Chapter 6.

³⁰⁶ Interview #51.

³⁰⁷ Non-Paper: Strengthening the European External Action Service by the Ministries of Foreign Affairs of Austria, Belgium, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, 1 February 2013.

³⁰⁸ Interview #46.

At the time of writing, it seems unlikely that the status quo will change in the near future. During the informal October 2013 discussions in Brussels, member states did not agree on this issue.³⁰⁹ Without a unified position of the member states, it seems unlikely that the future Commission President will transfer the authority over the neighbourhood policy to the High Representative. A member state diplomat commented on the situation, saying,

*“the Commission is not a natural partner in implementing this reform. In order to make changes that reallocate authorities from other Commissioners to the High Representative, there needs to be unity among the member states. This however is not in sight [on the question of the neighbourhood policy].”*³¹⁰

Development cooperation

A similar debate on the division of competences between the EEAS and the Commission emerged in the area of development cooperation. The wording of the respective article in the EEAS Council decision is a product of the intense negotiations between the member states and the Commission (see also Blockmans and Hillion, 2013: 53–60). Each side was pleased with the formulations in the text: the Commission was made responsible for the “management” of financial programmes, while the High Representative was tasked with “overall political coordination”.³¹¹ The Commission still retained authority over development cooperation policies.³¹²

The outcome – namely, the fact that the political coordination was given to the High Representative and the EEAS, while the overall authority stayed in the Commission – was evaluated differently in the years that followed. One long-term EU insider and member state diplomat interpreted the result as favourable to the member states’ position of having a strong High Representative:

³⁰⁹ Interview #52.

³¹⁰ Interview 52.

³¹¹ See Art. 9(1) and (2) Art. EEAS decision.

³¹² The responsibility for the EDF and the DCI stayed with the Commissioner for Development, and all proposals for decisions are subject to normal procedures of the Commission, including having to be adopted by the College of Commissioners (see Art. 9(3) EEAS decision).

“the decision to give the EEAS the political stages of the programming was quite a strong one for the EEAS. The price was to leave the daily management of the financial instruments in the Commission.”³¹³

From this point of view, a strong Commission was unavoidable, because the EEAS does not have the power to implement financial instruments.

However, the High Representative is also the Vice-President of the Commission; therefore, it came as a surprise to commentators that the High Representative was not assigned overall political authority over development instruments (see Stroß, 2012). The German-led input paper of 14 member states demanded greater authority for the High Representative, and argued that “strategic and multi-annual programming in the area of development cooperation should be conducted under the overall authority of the High Representative”.³¹⁴ Strategic planning thus lay in the hands of the High Representative. This required a change to the article on the financial instruments in the EEAS Council decision, which, in the latest version, clearly highlighted the authority of the Commissioner for development cooperation.

The development community was sceptical about this argumentation, and feared an unnecessary politicisation of development cooperation. A Concord report stressed, that “the ‘D’ in PCD[³¹⁵] is not being acknowledged by the EEAS, which interprets it as an effort to ensure consistency of EU policies with a foreign affairs agenda” (CONCORD, 2012: 13). The report pinpointed examples in the Sahel and the Horn of Africa, where security goals were prioritised over long term-development efforts. An Oxfam report noted:

“the risk of granting leadership to the EEAS is that development and humanitarian aid cooperation will be used for political ends rather than to deliver emergency relief, protect civilians, provide aid, and work towards reducing poverty in the developing world” (Oxfam, 2012)

Consequently, the development community proposed keeping responsibility for the programming with the Commission (CONCORD, 2013).

³¹³ Interview #41.

³¹⁴ Non-Paper: Strengthening the European External Action Service by the Ministries of Foreign Affairs of Austria, Belgium, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, 1 February 2013.

³¹⁵ Policy Coherence for Development.

The German position did not get much support from other member states at the early 2013 Gymnich meeting. Some of the member states, for example, had positive experiences with an independent development cooperation policy in their own national administrations.³¹⁶ In addition, the EEAS leadership valued the experiences of the first programming exercise, which proved the practicality of the existing solution.³¹⁷ The decision to leave the EEAS decision untouched dealt a final blow to the German initiative, which required a change to the article regarding the financial programming.

Germany again raised the point that the coherence of EU foreign policy could be improved by giving more authority to the High Representative during the consultation meetings on the EEAS review in October 2013. However, how this could be achieved in practice, “was not spelled out”.³¹⁸ Meanwhile, the point did not feature in the main review paper.

Relex group

Catherine Ashton had difficulties capitalising on one of the major innovations of the Lisbon Treaty: the double-hatting of the post that made her Vice President of the Commission.³¹⁹ In this job, the group of external relations Commissioners (Relex group) was seen as a platform for the High Representative to coordinate the external activities of the Commission. However, as outlined in previous chapters, organisation of the group did not start off on the right foot. Commission President Barroso, with support from the General Secretariat of the Commission, secured the management of the group and retained the right to chair it. In the time that followed, the track record of the group was poor, and it rarely convened.

To some extent, the effective bilateral working relations between Catherine Ashton and other Commissioners compensated for the weaknesses of the Relex group. However, some member states wanted to further institutionalise cooperation of the

³¹⁶ Interview #51.

³¹⁷ Interview #46.

³¹⁸ Interview #52.

³¹⁹ The view was shared in interviews across institutions and member states (for example, interviews #19, #23, #32, #36, #39, #41, #44, #46, #51) and also picked up by commentators during the review process (Blockmans, 2012b: 34–37; Helwig et al., 2013: 34–35; House of Lords, 2013: 40–42).

High Representative with the other Commissioners. The Relex group was seen as the perfect starting point. The German-led input paper thus proposed that,

*“in addition to close bilateral contacts, the Relex Commissioners should meet at least once a month under the chairmanship of the HR/VP in order to allow for efficient coordination in the field of external relations. These meetings should be jointly prepared at senior level by the EEAS and the Commission.”*³²⁰

In a letter dated 14 March 2013 from British Secretary of State William Hague to Catherine Ashton, Hague specifically supported the German-led initiative. A separate Romanian non-paper also took up the same argumentation, and pointed out that “the mandate [of the EEAS] cannot be fully implemented without a more coherent coordination of the High Representative with all Relex Commissioners”.³²¹

These inputs signalled that the member states broadly supported the High Representative as a coordinator in the Commission. During the 2013 Gymnich meeting, the relations with the Commission were discussed at length. A close observer of the meeting recalled that Catherine Ashton had reported on the intense challenges of her role as Vice-President of the Commission. On the one hand, she valued the working relationship with Commissioner Andris Piebalgs, and Füle. On the other, she had to rely on the support of the General Secretariat of the Commission for the organisation of the Relex group. The cooperation with the Commission Secretariat turned out to be an impossible organisational hurdle that prevented her from effectively coordinating the external relations of the Commission³²². It thus became clear that additional resources should be allocated for the Vice-President post.

Against this backdrop, Ashton (2013b: 16) proposed a joint Commission–EEAS secretariat for the organisation of the Relex group as a short-term recommendation. In addition, it was announced that Commission President Barroso and she had agreed to organise regular meetings of the external relation Commissioners with her in the

³²⁰ Non-Paper: Strengthening the European External Action Service by the Ministries of Foreign Affairs of Austria, Belgium, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, 1 February 2013.

³²¹ Non Paper of Romania, Views on the Review of the European External Action Service, 19 March 2013.

³²² Interview #51.

chair. These were to start during the last year of their term. Thus, the push of the member states to improve the coordination role of the High Representative was the most immediate result of the review. According to one diplomat involved, the immediate change was due to the fact that all member states supported the initiative. Swift implementation was possible because changes were within the current legal framework³²³.

The review also examined the possibility of the EEAS coordinating external aspects of internal policies, such as “energy security, environmental protection and climate change, migration issues, counter-terrorism, financial regulation and global economic governance” (Ashton, 2013b: 8). Being the agenda manager of the Foreign Affairs Council, the EEAS needed to provide input for the ministers on these policy areas. According to the review paper, additional resources were required to cooperate with the relevant Commission services. A close observer pointed out that the EEAS already had some coordination capabilities within the directorate for Multilateral and Global issues;³²⁴ however, a further increase of resources did not receive the necessary support from the member states in the negotiations. Though the member states acknowledged the objective of making the EEAS a coordination hub for all aspects of external policies, they were hesitant to speak out in favour of an increase of EEAS resources, given their budgetary restraints.³²⁵ It remained open in terms of how far Catherine Ashton’s suggestion to “reinforce EEAS capacity for external aspects of key EU policies” (Ashton, 2013b: 16) would be taken up.

7.4. Focus II: The functioning of the High Representative and the EEAS

Deputies

The question of introducing deputies for the High Representative has been subject to debate since the days of the European Convention (see also Chapter 4). Does the High Representative need a number of deputies to implement her lengthy job description? The question was picked up on during the set-up of the EEAS: the member states and the Commission were sceptical about the practical and legal

³²³ Interview #52.

³²⁴ Interview #52.

³²⁵ Interview #52.

implications of having to deal with substitutes. Nevertheless, the EP saw benefits in a system of politically accountable substitutes who could act as high-level interlocutors towards the MEPs (see Chapter 5). However, no agreement was reached. The post-Lisbon years established an informal system of deputies. Commissioners filled in for Ashton on matters regarding Commission policies, while a representative of the rotating Council Presidency acted on her behalf in matters of CFSP. The informal system thus sustained the organisational-pillar division between the Commission and the Council that the Lisbon Treaty meant to overcome.

The question on deputies was never solved, and it was no surprise that it came up again in the run-up to the review. The fact that the offices of the High Representative and Vice-President were legally still two separate positions further complicated the matter. Consequently, commentators with a legal background argued in favour of introducing two separate deputies: one inside the Commission for the Vice-President hat, and one for CFSP (Blockmans, 2012a). Others maintained that it would be ideal if a deputy would be double-hatted as well and representing the High Representative in all related tasks (Lehne, 2011). A deputy based in the EEAS was seen to have the closest insights into most matters of EU external action (Helwig et al., 2013). The EP repeated its call for a politically accountable deputy that could appear in parliament on behalf of the High Representative when absent. In general, experts agreed that the established informal system did not provide a satisfying remedy for the job overload of the High Representative, however they failed to provide a solution that would not require a treaty change (see House of Lords 2013, pp.12–13).

The deputy question was destined to become a complex issue in the review discussions. In the run-up to the review, none of the member states clearly positioned themselves on the matter. A top EEAS official assumed that the likely result would be to formalise the developed practices and stick to the use of Commissioners and (trio)-Presidency ministers as fill-ins.³²⁶ Nevertheless, the foreign ministers engaged in discussions on the matter of deputies during the Dublin Gymnich meeting.³²⁷ Catherine Ashton summarised the findings in her review paper, and presented two models. The first model could be introduced within the existing legal framework, and

³²⁶ Interview #46.

³²⁷ Interview #51.

would formalise the present arrangements; the Commissioners and foreign ministers would continue to act on her behalf. The second, medium-term, recommendation foresaw that the High Representative would be allocated either a double-hatted deputy in the EEAS, or clear authority over other Commissioners that would act on the High Representative's behalf. These formal arrangements would allow the deputies to represent the High Representative in the Council, the EP and the Commission College (Ashton, 2013b).

In late 2013, the likelihood of reaching a comprehensive solution was low. Introducing, 'Junior Commissioner', subordinate to the High Representative as Vice-President of the Commission, might require an unwanted treaty change.³²⁸ Meanwhile, the EP insisted that any deputy in the EEAS would need to be politically accountable. However, the member states argued that the political accountability of EEAS officials also required a treaty change (Helwig et al., 2013). Concessions by the EP were unlikely, as MEPs already considered their approach to be flexible as they accepted Commissioners and ministers on the High Representative's behalf.³²⁹ The most likely outcome of the review was thus a declaration or decision that would formalise where and how Commissioners and ministers could fill in for the High Representative.³³⁰

Internal EEAS organisation

The Council decision on the EEAS did not go into much detail on the internal organisation of the service. Thus, there was flexibility to introduce changes within the existing legal framework. Two points came up in the discussion in and around the review: the efficiency of the organisational structure, and the integration of the crisis-management structures into the rest of the service.

Due to the way in which the EEAS was established, initial inefficiencies in the organisational structure of the service were inevitable. The service was patched together from services of the Commission and Council Secretariat, as well as seconded national diplomats. The Commission's DG Relex thereby constituted the

³²⁸ Interview #52.

³²⁹ Interview #52.

³³⁰ Interviews #46, #52.

largest building block in the headquarters, with 585 officials. As argued by a long-term insider, “It was a Commission takeover”, and the service was modelled around the organisational chart of DG Relex.³³¹ The prime objective was not always efficiency, but rather managing integration of the various units from the Council Secretariat and the Commission. The result was an organisational chart that resembled a “reversed pyramid” (Wouters et al., 2013: 19), with too many management positions at the top. Wouters et al. (2013) pointed out that the chain of command was too long, and the communication between the upper and lower echelons was inefficient. The corporate board structure was also seen as dysfunctional, because responsibilities for certain EEAS policies were spread across the members of the top leadership, and created confusion over who was in charge (House of Lords, 2013; Lehne, 2011; Wouters et al., 2013). In particular, the fact that the Chief Executive Officer, David O’Sullivan, received political responsibility within the top leadership, while the title would suggest that he was only in charge of administrative issues, raised eyebrows among observers.³³²

The inefficiency of the management structure of the EEAS did not pass unnoticed. The German-led paper stated that “the processes and structure at senior management level should be reviewed with a view to ensuring clear reporting lines and division of tasks”.³³³ In addition, the UK pressed for an efficient use of resources, and stated its position that

“[a]t time when all member states are facing budgetary pressure [...] the UK consistently takes the view that it is vital that all EU institutions and services, including the EEAS, are innovative in ensuring resources are used as efficiently as possible, with rigorous focus on priorities.”

Thus, the UK believed that “the priority lies in developing working methods and procedures that enable us to come to decisions quickly and mobilise necessary resources”. The discussions did not dig too deeply into managerial issues, because the Gymnich meeting of the foreign ministers was not the place to discuss technical

³³¹ Interview #3.

³³² Interview #3.

³³³ Non-Paper: Strengthening the European External Action Service by the Ministries of Foreign Affairs of Austria, Belgium, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, 1 February 2013.

details. However, consensus among the member states emerged that the organisation of the EEAS had to be streamlined.³³⁴

Ashton (2013b: 4–5) thus proposed reforming the corporate board and management directorate structures in her EEAS review paper, which was accepted by the member states. The Corporate Board would lose one member in future, and not have a distinct executive secretary-general, which was mainly seen as useful for managing the build-up phase of the service. In addition, the number of managing director posts would be reduced, thus making the EEAS less top-heavy. Resources would become available for other functions, inter alia for a shared service centre that would integrate the EUSRs into the EEAS.

The integration of the CSDP/crisis-management structures into the EEAS was challenging. Any substantive change would require a change of the EEAS decision. However, such a change was unrealistic. The EEAS decision stated that the crisis-management structure had to be “placed under the direct authority and responsibility of the High Representative” and that “specificities of these structures, as well as the particularities of their functions, recruitment and the status of the staff shall be respected”.³³⁵ A second review on defence policy was carried out at the time of the EEAS review. Decisions on matters of crisis-management structures were more likely to be made at the European Council on defence in December 2013.³³⁶ Ashton’s review paper thus resorted to looking mostly at very technical aspects of cooperation between the crisis-management units and the geographic and thematic units. Suggested changes included short-term staff loans between units, speeding up of decision-making procedures, and greater responsibility of the EEAS Secretary-General on the issue (Ashton, 2013b: 5–6).

EU delegations

One of the main challenges for the EEAS delegations was to integrate the staff, structures and policies of the member states and the Commission. In February 2013, 3,514 (64.6%) of the 5,436 staff in EU delegations were Commission staff, which

³³⁴ Interviews #51, #52.

³³⁵ Art. 4(3) EEAS decision.

³³⁶ Interview #51.

primarily worked on development-cooperation issues (House of Lords, 2013: 26). In order to allow for the coherent functioning of the EEAS delegations, the member states decided that heads of delegations should be double-hatted, and be in charge of CFSP and Commission matters in 2010. The Commission retained the right to instruct the delegations on matters of its competences, however it had to copy-in the Head of Delegation and the geographic desk at the EEAS headquarters.³³⁷

The review was not expected to bring any change to this arrangement. Even though some member states were in favour of a more ambitious coordination mechanism (see Chapter 5), it was undisputed that the Commission had to be able to instruct its personnel.³³⁸ This was only logical, as the competence for, *inter alia*, the implementation of development instruments still rested with the Commission. However, even more problematic was the fact that Commission officials did not follow the agreed guidelines, and failed to inform the EEAS and the heads of delegation. The Secretary-General of the EEAS, Pierre Vimont, had to admit that the “Heads of Delegation struggled to control the group of people in the delegation who retained a direct link with different services inside the Commission” (House of Lords, 2013: 23). As Wouters et al. (2013: 66) stated, “problems arise when instructions coming directly from the Commission apparently disregard political considerations on the ground and political priorities set by the EEAS”. Based on these concerns, the German-led paper argued that “all instructions to delegations should be transmitted via the Heads of Delegation”.³³⁹ Concerns over a second, independent Commission structure within the EEAS delegations were also part of the discussions at the 2013 Gymnich meeting.

Surprisingly, Ashton’s EEAS review paper did not place too much importance on the issue, and noted that “the general principle that both EEAS and Commission services can send instructions directly to heads of delegation with a copy to the responsible EEAS geographical desk works well in practice” (Ashton, 2013b: 11). A change in the procedures was very unlikely at the time of writing, as all actors were satisfied

³³⁷ See EEAS Decision, Preamble, recital 13.

³³⁸ Interview #52.

³³⁹ Non-Paper: Strengthening the European External Action Service by the Ministries of Foreign Affairs of Austria, Belgium, Denmark, Estonia, Finland, Germany, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, 1 February 2013.

with the rules. However, member states remained attentive that the rules would be implemented and the heads of delegation would retain control over their delegations, as well as implementing the political priorities of the EEAS.

Integrating EU Special Representatives

The creation of EU delegations via the Lisbon Treaty, which also covered the representation of political matters under the CFSP for the first time, sparked a debate about the need to maintain a system of EUSRs. The debate was not new. Special envoys were one of the first instruments of the CFSP to ensure better representation in particular regions of interest. The first envoy was dispatched to the African Great Lakes Region in 1996. When the Amsterdam treaty introduced the High Representative for CFSP and the policy unit in the Council Secretariat, close observers in Brussels questioned the added value of having separate EUSRs (Adebahr, 2011: 92). However, instead of abolishing the instruments, EUSRs were integrated into Solana's administration, and valued because of their function as 'Solana's eyes and ears'. Another advantage was their flexibility. The mandate could be quickly set up and, when no longer needed, simply discontinued (Grevi, 2007).

The EUSR instrument remained largely unchanged with the Lisbon Treaty. The EUSRs kept their individual status and had their own staff and budget separate from the EEAS. An exception was the double-hatted EUSRs, who also held the post of head of the corresponding EU delegation (for example the EUSR to the African Union). The argument for keeping a separate instrument for CFSP representation in the form of special envoys is arguably the greater weight of the EUSR, as they are directly appointed by the member states in the Council. As explained by the current EUSR to the African Union, Gary Quince, on the importance of the special envoys in a House of Lords inquiry,

"Its significance is that it gives [the EUSRs] political gravitas [...] because their partners know that they are appointed by the Council on the advice of the High Representative, not just by the High Representative." (House of Lords, 2012: 197).

However, several experts argued in favour of the partial integration of the EUSRs into the service. With the EU delegation covering all aspects of external action, the

continuation of the EUSR mandates should be reviewed, and the EEAS should build the administrative support system for the remaining, strategically important, EUSRs in order to avoid duplications (Adebahr, 2010). Having heads of EEAS delegation in addition to EUSRs in a region risks causing confusion over who represents the EU. Within the EU system, the EUSRs work under the High Representative and report to the PSC, but coordination with the regional desks in the EEAS remains limited (House of Lords, 2012). Other experts argued against giving-up on the flexible instrument of the EUSR, and were worried that it could be “buried under the multiple layers of the EEAS” (Fouéré, 2013: 3). Their ability to ensure maximum coherence between the different foreign policy players in Brussels would be highest if they could act independently from bureaucratic hierarchies.

The High Representative took a strong position in the review paper, and argued for integration of the EUSRs into the EEAS. The status of the EUSRs would be “an anomaly post Lisbon” (Ashton, 2013b: 4): according to Ashton, the EUSRs should be fully integrated into the EEAS, while still keeping a close link to the member states via the PSC. This would entail a transfer of their budget and staff to the EEAS. However, as duplications were avoided and the salary levels of the staff were adjusted to EEAS levels, the total costs would go down (Ashton, 2013b).

The member states were sceptical about the integration of EUSRs, and the issue was debated in the PSC throughout the autumn of 2013. In particular, the unilateral decision of Ashton to terminate the activities of the EUSRs in the framework of the Middle East Peace Process before the end of 2013 by cutting off their budget raised eyebrows in the member state capitals (Fouéré, 2013; Gardner, 2013a).³⁴⁰ On 28 November 2013, the member states conducted an extended discussion with the EEAS Secretary-General, Peer Vimont, on the subject.

The result of the discussion was that full integration of the EUSR instrument into the EEAS was off the table in the medium term. In the Council conclusions on the EEAS review, the member states expressed their commitment to the EUSR instrument, but

³⁴⁰ From the start of 2014, Helga Schmid, a close confidante of Catherine Ashton and the Political director of the EEAS, began to manage the Middle East Peace Process.

agreed to review the general guidelines on appointment, mandate, salaries and financing of EUSRs by March 2014 (Council, 2013: 4).

It has to be noted that Ashton was able to decide to cease the EUSR mandate while facing opposition on the part of the member states. This suggests that the High Representative had the potential to gain unintended discretion. The obvious clash between the preferences of the High Representative and those of the member states is noteworthy, and supports the initial assumption that the High Representative, as a bureaucratic actor, follows distinct preferences that aim to strengthen its organisation.

Conclusion

The review of the EEAS and the post of High Representative could not have been more different from the initial set-up process in 2010. The most telling difference in the negotiation dynamics was the absence of the Commission. During the setting-up of the EEAS, the Commission used the nascent status of the post of High Representative to take over the show and impose – with partial success – its reading of the Lisbon Treaty on the member states. The High Representative, coming from the Commission and being *de facto* appointed by the Commission President, wilfully accepted the Commission's lead, and the strong agent cooperation led to unintended discretion of the supranational actors (H4).

In 2013, the Commission did not play a significant role in the deliberations, which were carried out among the member states together with the High Representative. The reason for the Commission's decreased involvement can only be speculated. Part of the reason might have been that the High Representative could rely on her own administrative structure for the planning this time. Ashton often had frustrating experiences with the Commission over the first years in office, which made it difficult for her to play the role of Vice-President of the Commission. Given the sometimes limited support of the Commission leadership, she had limited interest in inviting them to the negotiation table (Gardner, 2013b).

In addition, the High Representative chose to play a moderating role, rather than confronting the member states with pre-set construction plans that would have been

costly for the member states to alter. From the start, the review was largely characterised by the inclusion of the member states through various informal meetings and consultations. The fact that the final drafting of the findings in a review report was completed in a closed circle around Catherine Ashton did not negatively affect the rather open approach. Compared to the closed working groups around Ashton and her advisor Christoffersen during the set-up of the EEAS, the member states had much better ongoing control over the whole review process. The final report primarily summarised the positions and discussions of the member states. As the review was mostly based on the input of the member states, unintended discretion seemed to be almost impossible (H2). In addition, it can be argued that the review started more or less from the first day of the EEAS. With the constant possibility of member states bringing in their view, no situation of immediate deadlines – which would have pressured the member states to make quick decisions in favour of the discretion of the High Representative – appeared (H3). In the absence of a clash between the Commission and the member states, and because of the smooth moderating of the High Representative, the attention of the think-tank world – let alone of the media – declined significantly towards the end.

Based on the absence of supranational cooperation, uncontrolled agency and time pressure, one would expect the member states to have constructed an EU foreign policy architecture to their liking, and possibly to have made significant changes to the way the EU's external action was organised. However, as seen in the past, the member states could not agree on far-reaching changes. Given the fundamental conflict of preferences on the integration of foreign policy that had already divided the member states during the European Convention, any major changes were off the table. The reallocation of non-CFSP competences from the Commission to the EEAS, or CFSP competences from the EEAS to the Commission, was never considered for the review, and neither was a change away from the intergovernmental procedures of the CFSP, such as QMV. The Treaties stayed untouched, and not even long-term alterations to them were suggested in the review report.

Not only had the European Convention defined the dividing lines between the member states, but the negotiations on the set-up of the EEAS also made the conflicting positions of the member states surface. A major division was between member states that favoured the strong authority of the High Representative over all policy fields, and those who wanted to preserve a balance between the Commission and the EEAS competences. The latter effectively allowed other policy objectives, such as poverty eradication, to be safeguarded by the authority of the more independent Commission service. On the other end of the policy spectrum, integration of the crisis-management structures in the EEAS was still a thorny topic, and remained under the direct authority of the High Representative. In anticipation of the difficulties in untangling the package deal that was carefully created in summer 2010, the member states refrained from renegotiating the EEAS Council decisions. The mandate of the High Representative for the review was only to look at technical issues that did not require treaty change. Once more, conflicting preferences of the member states did not increase the discretion of the High Representative, but left the High Representative with no discretion at all (in contrast to H1).

It can thus be argued that the experiences arising from the discussions around the foreign policy architecture of the last 10 years, as well as the mixed experiences of the first years of action under the new set-up, lowered the ambition of the actors involved to make significant changes to the status quo. The focus was thus on the rather technical changes of more clearly spelling out actors' competences and the division of labour. At least this showed that, when the member states could agree (H1) and the Commission did not intervene (H4), the member states were able to realise their preferences and control the set-up of the office of High Representative. Potentially important alterations comprised a joint secretariat for the organisation of the Relex group of Commissioners that intended to strengthen the High Representative in the Commission, as well as a streamlining of the internal EEAS organisation.

A further observation of this chapter might provide valuable feedback to be used for the theoretical development of this field: the importance of informal processes with respect to aggregating preferences. Being less rule-based, this trend especially

strengthens the more powerful members of the collective principal (in this case Germany), while at the same time enhancing the ability to come to an agreement. *Ceteris paribus*, informally organised principals might thus have a stronger ability to control the agent, and principals' preferences can more easily be approximated by looking at its strongest constituting member. In the case at hand, Germany's initiative and preferences only made the drafting of a strong position paper of half the member states possible. The review report by Catherine Ashton was thereafter modelled around this paper. In foreign policy, the EU agent's discretion might be determined by looking at Berlin.

8. Conclusion

The Lisbon Treaty's major foreign policy innovation, the post of High Representative of the Union, can be seen as an indicator of the overall state of EU foreign policy. On the one hand, the creation of a position above the level of nation states, akin to a foreign minister, reflects the ambitions that the member states had (and still partly have) with respect to Europe's role in the world. Instead of keeping the main representation and planning of EU foreign policy rotating among the member states' foreign ministers and the leadership of external financial instruments to the Commission, they created a potentially powerful 'centre of gravity' with the post of High Representative. On the other hand, the empirical analysis in this study reveals that the High Representative's activities are also indicative of the challenges that EU foreign policy has to face. Foreign policy remains an issue of 'high politics' within which member states refuse to surrender sovereignty over their choices, and common EU action is often paralysed.

The relationship of the High Representative to the member states follows dynamics that differ from politics in other activity fields within the EU. While a functional model of delegation serves to explain why the European Commission can gain autonomy in the agenda-setting power in regulatory policies (Pollack, 1997), the factors that explain the extent of the High Representative's room for manoeuvre as an EU actor in its foreign policy have yet to be unearthed. This study aimed to make a first advance towards an analysis of the High Representative's office within a PA framework. Seen from an historical perspective, the Lisbon Treaty made a leap forward in terms of EU-level foreign policy instruments. However, this observation alone tells us little about the discretion that the High Representative possesses as Europe's foreign policy agent. Instead, the analysis took into account a number of institutional, as well as contextual, factors in order to answer the research question: What conditions the discretion of the post of High Representative?

8.1. Analysis of the independent variables

Conflicting preferences

Conflicting preferences of the member states were defined as a possible variable that explains the discretion of the High Representative of the Union. PA literature suggests that conflicting preferences of a collective principal lead to a situation in which the agent gains unintended discretion. The members of the collective principal cannot agree on sanctions for the agent. In anticipation of this, the agent has greater discretion in the conduct of its activities. Eventually, because member states cannot agree on a common position, the High Representative has the discretion to choose its own course of action. Indicators for conflicting preferences among member states were defined as initially different positions among member states as well as their failure to arrive at a common position through deliberations and brokerage.

Based on the findings, this hypothesis (H1) can be rejected. In most of the cases considered here, the High Representative did not have unintended discretion when the member states disagreed. It is quite clear why the High Representative did not have discretion, when the member states were already struggling to find a common position on a mandate: the High Representative depended on a mandate for each of her activities to be initiated, as this was the only source of her authority; thus, without a mandate from the member states, the High Representative had limited discretion over diplomatic activities. This explains, for example, the low profile that the High Representative had in the crisis response to Libya, or the limited activity of the High Representative in the development of the strategic visions of EU's foreign policy.

Moreover, even in cases in which the High Representative had a mandate, conflicting preferences of member states rather limited her discretion. For example, the discretion of the High Representative over the agenda-management of the Foreign Affairs Council was limited, because the member states did not agree on the priorities for their discussions. Moreover, when the High Representative issued statements, she has to take into account the positions of all member states and could not go beyond the lowest common denominator position. This observation suggests that PA relationships in the intergovernmental field of foreign policy fundamentally

differ from those of the previously analysed sectors, such as in the case of international negotiations conducted by the Commission. Foreign policy is still the domain of the member states, with EU activities complementing the efforts of the member states, rather than substituting them. The mandate that EU agents receive is thus subject to permanent contestation, and adaptation to member state needs.

Member states – so far – have the possibility of engaging unilaterally, or in other constellations outside of the EU framework. This process of ‘agent-shopping’ has also been observed in other EU PA relationships (Dür and Elsig, 2011). In matters of foreign policy, member states either select agents that are most likely to represent their interests, or choose to act unilaterally. In anticipation of a loss of the principal, the agent has an incentive to keep the mandate flexible, and to adapt to the different preferences of the member states, which in turn limits the resulting discretion. In the case of management of the Foreign Affairs Council, for example, this means that the High Representative has an incentive to reflect all preferences of the member states in the agenda of the Foreign Affairs Council, in order to ensure their participation in the CFSP.

Only in the case of setting up the EEAS was the original hypothesis (H1) confirmed. The member states had different visions of the organisation and functioning of the EEAS, which allowed the High Representative, together with the Commission, to follow her own agenda. It has to be pointed out that the context differed from that of the day-by-day business of foreign policy making. The mandate for the High Representative to create a proposal for the organisation and functioning of the service is clearly spelled out in the Lisbon Treaty. All member states had already committed to the creation of the EEAS, so the High Representative did not have to anticipate that one of them would disengage completely.

The analysis of the preferences thus points to a finding that is worth exploring in future studies. When PA models are applied to less integrated policy fields of the EU, the fragile and contested nature of the agent’s mandate has to be taken into account. Incorporating this finding into future research models will fundamentally change the conventionally predicted PA relationship between preference distributions within a collective principal, and the discretion of an agent. The agent

has to permanently secure support for the relevant mandate, and hence adapts to the preferences of the principals. Conflicting preferences of members of the collective principal lead to a decrease in the agent's discretion. In the case at hand, when the member states did not agree, the High Representative had less room for manoeuvre.

The empirical findings also beg another question: To what extent do the preferences of all member states weigh equally? In the history of the EU, the Franco-German alliance has often been crucial for reaching agreements between all member states, but also for enabling the leadership of EU institutions. For example, Jacques Delors' often-praised political entrepreneurship as Commission President was partly enabled by working closely together with Helmut Kohl (German Chancellor) and Francois Mitterand (French President) (Lord, 2002). It can be argued that, given the contested nature of the High Representative's mandate, support from the 'big three' member states (Germany, France, UK) is indispensable for the foreign policy agent to play a strong role. Solana's tenure as EU foreign policy chief showed that the initiatives of *directiores* (Hill, 2011), consisting of a couple of larger member states, were decisive in the development of his portfolio. The Iran nuclear talks started out with a unilateral initiative of France, the UK and Germany, and only subsequently developed into a major diplomatic mission headed by the High Representative (Crowe, 2005; Meier, 2013). The empirical material of this study supports the claim that preferences of big member states are crucial. The Franco-German position paper during the course of the European Convention led to a compromise on the High Representative's institutional design. During the Libya crisis, differences between Germany and France muted and paralysed the High Representative in the immediate crisis-management. While support from all of the big member states for Solana's ESS made adoption possible in 2003, the initiative of some of the member states to write a new global strategy led nowhere in 2013, as none of the 'big three' committed to it. During the EEAS review, the German-led input paper became the main point of reference. The decision-making dynamics in the EU thus show that smaller member states tend to follow their big neighbours, which makes the preferences of the 'mighty few' the point of reference for the foreign policy agent.

Control and oversight mechanisms

H2 stated that the control and oversight mechanisms of the member states conditioned the discretion of the High Representative. According to this logic, the member states prevent the High Representative from unintended actions by setting a rule-based mandate, by being present in the implementation, or by having a low threshold for sanctions. If these mechanisms are not present, the High Representative can have unintended discretion.

Once more, the set-up of the EEAS turned out to be a special case. During the deliberations of the set-up of the EEAS, the member states' (in)ability to oversee the complex drafting of the decision on the service was decisive. The member states did not have the mechanisms in place to follow up on the latest drafting stages of the High Representative and her team. However, when we look at the day-by-day management of the EU's external action, ongoing control by the member states can be seen as a less decisive issue.

The empirical evidence suggests that the anticipation of informal *ex-post* sanctions of the member states had a major limiting effect on the discretion of the High Representative. The High Representative's communication efforts are a case in point: her personal statements were not formally checked with the member states; still, anticipation of sanctions by the member states in form of possible necessary public objections, if the High Representative issued a statement that did not reflect their preferences, significantly limited the discretion of her press team. Statements are checked carefully by the officials and compared to previously adopted policies of the Union and positions of individual member states. Another example was the crisis response to Libya. In this case, Ashton's room for manoeuvre was limited, as she could not afford a diplomatic move that was not backed by the member states.

The findings add a new facet to the evaluation of the post of High Representative. Catherine Ashton was often criticised for not being outspoken or bold enough in her activities as High Representative. However, critics often overlooked the fact that the post of High Representative was not imbued with the necessary legitimacy to make bold decisions without being backed by the member states. As a consequence, the member states did not have to set up costly control mechanisms to keep the High

Representative in line with their preferences – what McCubbins and Schwartz (1984) call a system of “police patrol oversight” – which would allow constant monitoring of the High Representative’s activities. The High Representative is not a bureaucratic agency, which is difficult to oversee by nature; rather, the EU foreign policy chief is a public and political figure. Missteps on the diplomatic stage trigger “fire alarms,”³⁴¹ such as media articles, parliamentary debates or diplomatic cables; this automatic decentralised system of checks meant that the High Representative herself made sure that she stayed within the predefined scope of manoeuvre set by the member states. The member states could thus rely on the fact that the High Representative anticipated *ex-post* sanctions, such as public criticism, contradicting statements or unilateral actions all leading to a loss of credibility, in case of unwanted behaviour.

This finding has implications for future research. There are few observable formal oversight mechanisms in place. The High Representative’s anticipation of informal *ex-post* sanctions, which for the most part limits the room for manoeuvre, is not straightforward to identify. Future research can thus hardly rely on written accounts and analyses of primary and secondary text sources. Rather, it is necessary to directly engage with those in the field. Expert interviews, though having their own weaknesses regarding objectivity and comparability, are an indispensable source for PA scholars to reveal subtle oversight and control mechanisms.

Time pressure

The existence of a close deadline increases pressure on the member states to come to an agreement. The PA literature identifies this as a condition for the discretion of the agent, as hastily written mandates lack detail that would otherwise constrain the agent in the task. The evidence collected for this study, however, suggests that time pressure of member states can be largely neglected as a source of constraint on the discretion of the High Representative.

During the set-up of the EEAS, there were indeed signs that time pressure contributed to the member states’ inability to control the establishment of the service.

³⁴¹ While “police patrol oversight” is analogous to real police patrols, and includes control mechanisms that are “centralized, active, and direct”, “fire alarm oversight”, just like real fire alarms, is “less centralised and involves less active and direct intervention” (McCubbins and Schwartz, 1984: 166)

However, the combination of unfavourable conditions for the member states on the whole contributed to their loss of control. Time pressure towards the end of the negotiations prevented the member states from going into more detail about the construction of the EEAS, and from reopening some contested issues. Nevertheless, the permanent representatives spent many hours in the weekly sessions discussing each article of concern thoroughly. If it was not for their internal disagreement and the ‘secrecy’ of the High Representative and Commission in preparing the drafts, it is likely that they would have managed to create a service that was closer to the member states’ preferences. This is also highlighted by the fact that further deliberations on the service during the review in 2013 did not bring about major changes to its organisation and functioning, even though there was no time pressure.

The findings on the activities of the High Representative confirm the observation that time pressure played only a limited role. Neither the absence of a deadline (for example, when developing a strategic vision for the EU) nor pressure on the member states to aggregate their preferences (for example, in the Libya case) had an effect on the general limited discretion of the High Representative. In the analysed cases, it was rather a matter of the member states agreeing or disagreeing on actions and priorities. Deadlines were less of a constraint for the member states in arriving at an agreement.

Agent interaction

Interaction with other supranational agents was posited as another possible condition for the discretion of the High Representative. The Commission was defined as a second EU-level agent. In cases where the two agents are in a state of bureaucratic competition, their struggle for influence over a particular EU action limits their discretion. On the other hand, if the Commission and the High Representative coordinate their position vis-à-vis the member states, they will seek to widen their scope of competence. Through their cooperation they can make it more difficult for the member states to control their activities.

The interaction between the Commission and the High Representative was a crucial aspect of the analysis. The innovation of the Lisbon Treaty – making the High Representative the Vice-President of the Commission – was the centrepiece of the

reform geared towards increasing coherence between the economic and political external relations of the Union. However, it was also a subject of concern for the member states, which were alarmed about the prospect of losing sovereignty in the foreign policy domain. What was the impact of these new possibilities on cooperation?

The empirical observations show that in the initial years following the Lisbon Treaty, there were few signs that the Commission and the High Representative would closely cooperate on foreign policy issues and set an independent agenda. Again, it is important to differentiate between the dynamics during the creation of the EEAS, and the actions of the High Representative. The build-up phase of the EEAS showed clear signs of cooperation between the High Representative and the Commission President and Secretariat. As a consequence, the initial set-up followed, to some extent, the blueprint of the Commission, rather than of the member states, which struggled to follow the drafting of the EEAS decision.

With the EEAS preliminarily in place, the interaction between the High Representative and the Commission was characterised by competition – or at least by the absence of cooperation. During the response to the crisis in Libya, or the review of the strategic partnerships, the cooperation between the two EU actors was constrained by diverging preferences and the inefficiency of mechanisms that would ensure their cooperation. This might well have been due to the nascent status of the EEAS, which first had to establish itself as a credible foreign policy player in Brussels and abroad. Mechanisms such as the crisis platform and the potential revival of the group of external relations Commissioners, headed by the High Representative, might in the future increase the cooperation at EU level.

The review of the EEAS revealed that the High Representative and the service developed as a bureaucratically independent body. A ‘divorce’ from the Commission was apparent, as it was not playing an active role in the review of the service. Furthermore, any issues of closer integration into the Commission that were raised during the setting-up of the EEAS were not part of the discussions. The main link between the Brussels actors will remain the single geographic and thematic desks of the EEAS, joint work in the Council WGs, and the High Representative’s

coordination function concerning the external portfolios of the Commission. Future research should track these developments.

8.2. The constrained agent

The evaluation of the conditions for discretion of the High Representative contributed to further refinement of the PA approach. First and foremost, it can be stated that the PA approach offers a useful toolbox with which to analyse intergovernmental policy fields such as the CFSP. Given the limited transfer of competences to the EU level, the EU's foreign policy is, by definition, prone to showing less discretion for supranational agents. Limited discretion is intended by the member states in order to maintain control over their foreign policies. Nevertheless, the member states create foreign policy agents at the EU level, and hence risk losing control of their activities. It was shown that the interaction between the member states and the High Representative can be analysed within a PA framework. Even though the results showed that the High Representative has had very limited discretion, the PA framework provided additional insights into the mechanisms and dynamics of the relationship between the member states and the Commission.

Nevertheless, the application of a theoretical approach to a new field of study challenges researchers by pushing them to refine the existing theoretical toolset and to scrutinise its assumptions. Accordingly, the PA framework could be adjusted to increase its explanatory power in the realm of foreign policy. The High Representative is a qualitatively different agent than, for example, the Commission in the field of community policies. The High Representative is a 'constrained agent'.

Three interdependent elements characterise a constrained agent. First, its mandate is contested. In the established fields of PA analysis, principals acknowledge the general legitimacy of the agents' mandates. When the Council Presidency or the European Commission negotiates environmental agreements on behalf of the EU (Delreux and Kerremans, 2010), member states do not put the principle negotiator role of the two entities into question. Even though the principal might have different preferences on specific issues, and might sometimes sanction the agent, there is a

basic agreement that the agent is the legitimate actor to be entrusted with certain tasks. In the field of CFSP, however, it is suggested that the member states have not yet acknowledged the post of High Representative as the agent of their common foreign policy. Given the intergovernmental and optional nature of the CFSP, the alternative to circumvent the Brussels policy machinery remained open. The new post still has to build up full legitimacy as a foreign policy actor, and needs to be accepted by all member states. A contested mandate shifts the power balance from the agent to the principal. With a contested mandate, the agent is rather prone to following the preferences of the principal in order to ensure its support.

Second, the anticipation of *ex-post* sanctions is a major constraint on the agent's discretion. Constrained agents have to carry out their activities in a context in which they expect swift sanctioning of unwanted behaviour in form of objections aiming at the questioning of their authority. In the field of the CFSP, the High Representative has to anticipate sanctioning by the member states in response to unwanted actions. Formally and informally, each member state can still intervene if it sees its national interests being affected by a position or action of the Union and its High Representative. A case in which a member state would publicly distance itself from a statement or action of the High Representative would mean a major blow to the post's authority. The cost of making a decision that is not backed by the member states is prohibitively high for the High Representative. Other, more costly, control mechanisms are unnecessary. The thread of *ex-post* sanctions effectively prevents the agent from 'running loose'.

Third, the agent is constrained as it is part of an evolving institutional set-up. In the rather nascent development of the complex EU foreign policy architecture, it is likely that several agents stand in competition over resources and competences. Mechanisms for cooperation still have to be developed and established. The competition, or at least absence of cooperation, between agents is a further constraint on the agent's discretion.

The analysis of constrained agents with limited discretion adds an interesting new dimension, as positivist analyses of interstate cooperation seem so far to be caught in a divide between two schools of thought. On the one hand liberal

intergovernmentalists see only limited discretion for supranational agents. The discretion of agents is limited to the provision of functional improvements to the difficulties of interstate cooperation thereby lowering the costs for member states. Agents control commitments, chair meetings, plan the agenda, yet, they have no informational or institutional power to gain any unintended discretion.

PA analysts on the other hand are focused on explaining events where supranational agents have gained discretion. Usually in fields where regulatory policies need to be followed up by the control of commitments or in cases where an increased amount of technical knowledge is required, PA researchers find instances where agents can exploit their position and gain discretion. Less attention is paid to dynamics where agents do not gain autonomy.³⁴²

The proposed concept of a ‘constrained agent’ wants to close the gap between the views on supranational agents as passive providers of functions, on the one hand, and exploiters of asymmetrical power relations, on the other. A constrained agent is an agent that was created as a response to functional demands of the principal. It operates in a sphere where neither informational asymmetries nor the control of member state commitments is a central feature. Yet, the constrained agent has an incentive to operate with own discretion, either deliberately granted discretion in order to implement tasks more efficiently, or unintended discretion, in order to break ground in a decision-making context marked by narrowly defined principals’ interests. Even though the constrained agent might have limited discretion in a given state of development due to tight control of the principal over the exercise of its functions, applying the PA toolkit offers the insights to the dynamics between the principal and the agent that a purely intergovernmental analysis would not capture.

The High Representative is thus a constrained agent as things currently stand. However, it has to be pointed out that all of these characteristics can change over time. It is not impossible that the High Representative’s mandate will become less contested over time, that the High representative will be less exposed to *ex-post* scrutiny regarding activities, or that mechanisms for close cooperation will be developed with other EU-level agents.

³⁴² For a case where agents that suffer from limited delegation of tasks are analyzed see Elsig (2010).

The community scenario

Two scenarios seem theoretically possible. In the community scenario, the High Representative becomes less dependent on the member states. The assumption of this long-term scenario is that EU foreign policy will be more closely integrated into the “community model” of the EU over time. As the tracing of the discussions in the European Convention and on the review of the EEAS showed, it is very unlikely that the CFSP will become a shared, or even exclusive, competence of the EU in the foreseeable future, which would mean that the Commission plays a decisive role in its conduct. Nevertheless, a further development and application of QMV in the Council would give the High Representative more discretion, without having to anticipate a veto from individual member states. It would be more difficult for a member state to sanction an activity by the High Representative if the High Representative were backed by the majority of member states. However, there were no signs during Catherine Ashton’s term that majority decisions are a feasible option. The High Representative’s focus in the planning of the Council agenda, in reacting to the crisis in Libya, or in formulating statements and strategies, was never on searching for a winning majority among the collective principal, but always achieving consensus among all member states.

In the community scenario, the EP would be strengthened as an EU-level principal. Already, interaction between the High Representative and MEPs is intense. The EP is a crucial hurdle for the incumbent’s nomination, and Catherine Ashton was under intense scrutiny in the parliamentary hearings of early 2010. Exchanges of views and interactions between the EP and the EEAS have been numerous, and the leadership of the EEAS identified the Parliament’s approval as an important condition for its work (Helwig et al., 2013). Nevertheless, the rights of the MEPs in matters of EU foreign policy are still very limited. Most importantly, the EP is not able to delegate any tasks to the High Representative. Further integration of foreign policy would entail the EP receiving an upgraded role in matters of CFSP, and becoming a full principal with the ability to set the foreign policy agenda and effectively task the High Representative. In turn, this would make the High Representative less dependent on the member states, and widen the post’s room for manoeuvre. Again, besides some influence of the EP on the negotiations regarding the EEAS, the role of

the Parliament in the conduct of EU foreign policy remained low, without any signs of significant possibility for an increase. The Libya crisis was a case in point that the loyalties of the High Representative lay with the member states. The High Representative resisted pressures from the members of the EP, and did not formulate a strong based on the legitimisation of the EP. Instead, Ashton anticipated that any early position for or against a no-fly zone, or recognition of opposition would lack authority if the member states did not approve it.

Furthermore, in the community scenario the High Representative has the authority to coordinate the external portfolios of the Commission. In the period analysed, the High Representative did not possess an elevated position within the college of Commissioners, despite holding the position of Commission Vice-President. The first consequence of the EEAS review was the strengthening of the coordinating role of the High Representative as the chair of the Relex group of Commissioners. Further strengthening of the position would be achieved through a reduction in the number of Commissioners, as was originally foreseen in the Lisbon Treaty, or in the introduction of 'Junior Commissioners' that would work together in clusters. The High Representative would be the one to head the external relations cluster. It remains to be seen whether the next Commission period (2014–2019) will see adjustments to the role of the High Representative in the Commission. On the basis of the empirical sections of this study, coordination of the College will remain extremely difficult for the High Representative, who not only misses out on legal authority in the Commission hierarchy, but also faces different political cultures, and political objectives from the Commission DGs. Transforming selected Commissioners into 'second-class' Commissioners that only play an implementing role under the HR/VP might thus cause opposition from the member states they originate from.

Based on the findings of this study, a community scenario is unlikely in the foreseeable future. All of the above-mentioned developments had been part of the discussion during the Convention on the Future of Europe, and have been widely rejected by the member states. The review of the EEAS revealed that even smaller changes to the system that would cause a further centralisation of foreign policy are

controversial among member states. The member states arrived at an institutional deadlock. The path that was chosen when the post of High Representative was created – that is, operational integration without political integration – is likely to continue in the medium- to long-term.

The national network scenario

The alternative scenario is a closer link of the High Representative and the EEAS to the national foreign policy administrations. A closer network with national foreign policy elites would essentially mean a strengthening of the intergovernmental method of foreign policy making. Such a development would ideally be connected to an increased feeling of ownership of the member states towards the foreign policy chief.

The ‘national network scenario’ means that no further steps of political integration in the foreign policy field are being taken, and member states are also guaranteed their sovereignty on foreign policy decisions in the future. Institutional developments, such as a strengthening of the role of the EP or QMV, would be off the table. Instead, the High Representative would seek closer cooperation with the member states. The analysis in this paper revealed crucial elements of joint planning. For example, the Political Affairs Department in the EEAS increasingly provided an up- and downstream link to the member states, as it is directly linked to the WGs and plugged into the COREU network, and holds informal meetings with national counterparts (see also Helwig, 2014a). Gymnich meetings, even though they already took place under the pre-Lisbon system, gained further importance as they allowed for an informal exchange on strategic questions between the High Representative and the foreign ministers. The rotation of national diplomats in and out of the EEAS is another case in point, as it exemplifies how the boundaries between national and European diplomacy might become more blurred in the future.

However, the argument is counterintuitive at first sight. How can EU-level foreign policy making gain more discretion by anchoring the High Representative closer into national structures of foreign policy making? Indeed, conventional PA models would interpret such a development as a possibility for closer control of the agent, eventually leading to limited discretion.

However, taking into account the three characteristics of a constrained agent developed above, the forecasted effect of a closer network of the High Representative and the member states suggests the opposite. Eventually, the High Representative would be granted deliberate discretion. The High Representative, as a constrained agent, currently has the limitation of having a contested mandate. Joint work between the EU level and national administrations may, over time, contribute to increased acceptance of the High Representative as one of the main EU foreign policy players. The argument is that the deficiency of the current state of development of the High Representative is not primarily that the High Representative is closely controlled, but that it is not entrusted with major political work. The more closely national and EU-level diplomacies work together, the less the High Representative mandate will be contested, and the higher the probability that the High Representative will receive deliberate discretion on foreign policy choices.

This is further underlined by the observation that the current main means of control is the anticipation of *ex-post* sanctioning. The ongoing control of the High Representative is less decisive. Early exchanges between the High Representative and national administrations, and a development of common strategies, might open up deliberate room for discretion of the High Representative. Actions within these set boundaries will have little risk of being *ex-post* sanctioned by the member states.

What would an increased embeddedness of the High Representative in national foreign policy structures mean for the post's interaction with the Commission? The answer depends on the future course of the Commission. In the wake of the EP elections 2014, a controversial discussion arose with respect to how far the Commission and its President should develop into a political institution akin to a national government (Bonvicini, 2014; Grabbe and Lehne, 2014). Rather than being limited to its role as an 'engine of integration' and "guardian of the Treaty" it would acquire the additional role of a 'European government'. In that case, the new understanding of the Commission as an independent, directly legitimised (through the EP), and politicised executive would stand in conflict with a member states-owned High Representative. Coordination between the two entities might be hampered, as it might become more likely that the Commission and member states' priorities

would not match. However, if such a development does not take place, and the Commission develops as an agent in the service of the member states, the High Representative might be more able to play a coordinating role within the Commission's college.

8.3. Future research

Developing the PA approach

The findings of this study pinpoint avenues for the future enhancement of the PA approach. The definition of a 'constrained agent' has been provided as a result of the empirical findings of this study, and should be understood as a concept that is in need of further refinement and verification.

Future conceptualisation of the PA approach could take into account the concept of constrained agency, and should specifically address how the concept relates to other types of PA relationships. A recent debate in the PA literature focuses on the question of whether there are different types of agents (see Pollack, 2007). Majone (2001) distinguishes between two types of agents based on the logic of delegation. On the one hand, principals delegate power to an agent in order to reduce costs of decision-making, for example because of the specific expertise an actor has in a certain policy field. Just like in the model applied in this study, the principal is concerned with avoiding unwanted behaviour of the agent, and sets up control mechanisms accordingly. A typical example of the classical agent in the EU context is the Commission as an agenda-setter in the legislative process. However, Majone also identifies a second type of agent that he labels as "trustees". Principals delegate authority to trustees, as they want to underline the credibility of their commitments. It is essential to the efficiency of trustees that they are independent, and thus have a long-lasting mandate and do not have to face sanctioning of unwanted behaviour. However, that is not to say that the trustees are operating in a political vacuum; they have to ensure that they are perceived as credible, which requires that they have a certain degree of reputation and attraction (Alter, 2008). The ECJ and the European Central Bank are typical examples of trustees in the EU system.

Based on the findings of the study, it can be argued that a constrained agent, such as the High Representative, belongs in the former category (functional delegation), as the delegation follows functional concerns of enhancing the efficiency of decision-making and representation. Yet constrained agents can be understood as a specific subcategory, as their mandate is not based on a transfer of competences and the agent can be sidelined. As a consequence, constrained agents cannot base their authority on the delegation of powers alone, but need to seek constant political legitimisation from the principals, as well as from the wider foreign policy community. A network of contacts and reputation are thus crucial qualities of the office-holder.

The aim of further refining the typology of agents and introducing the constrained agent is to better understand the typical phenomena of agents with limited discretion that are typical in the field of IR. This can be achieved by trying to apply the concept to cases other than the High Representative of the Union. Two examples can be given, as follows.

Even the European Commission, which is often depicted as the prime example of a supranational agent (Pollack, 1997), can be conceptualised as a constrained agent in some activity fields. For example, Niemann and Huigens (2011) describe the emancipation-process of the Commission as an international player in the G8 framework. They argued that while the Commission lacked credibility and was often sidelined by the participating member states in the G7/G8 in the late 1970s/early 1980s, it earned increasing trust and respect from the member states over time. The member states thereby deliberately chose to widen the discretion of the Commission actors. This long-term development of the Commission as an external actor is an example of how contested mandates, subject to extensive *ex-post* scrutiny by the principal, turn into international actors that have a level of discretion. Niemann and Huigen argue that emancipation as an agent with discretion was due to the Commission's skilful networking ability, which, over time, encouraged the member states to increase its mandate.

Furthermore, limited discretion of agents beyond the state level is by no means a phenomenon that is restricted to the EU. Elsig (2010) discusses how the decrease of the role of the Secretariat-General of the World Trade Organization (WTO) over

recent decades can be explained from a PA perspective. While, from a functional perspective, member states would benefit from the delegation of agenda-setting and chairing tasks to the secretariat, the opposite has been the case. Elsig thereby discovered similar dynamics between the member state representatives in the WTO and the General-Secretariat to those discovered in the study at hand. Mistrust among the member states towards the Secretariat led to an absence of delegation, and “every director general has to find the right balance in paying sufficient attention and respect to the [member state representatives], otherwise he or she risks backlash” (Elsig, 2010: 509). The relation between the agent and the principal in the WTO hence seems to fit within the concept of constrained agency. Here, the General-Secretariat of the WTO seems to have a contested mandate within the activities of the international organisation, which is contributing to the decline of its role.

A first look thus reveals other cases in which the concept of constrained agency might provide new explanations for phenomena related to international actors with little room for manoeuvre. Why do states create expensive agents, and subsequently offer them little to no discretion? Why do some of these agents manage to stabilise their mandate over time and gain authority, while others lose relevance? The special, nascent status of constrained agents might shed more light on the factors that lead to the limited agency of supranational actors.

Further investigating the High Representative

Future research should target the office of the High Representative of the Union. Looking into the work of the office under the first incumbent, Catherine Ashton, revealed interesting insights into the mechanisms, options and challenges of the revamped foreign policy chief. The presented conclusions could be tested and further developed in the future. The research agenda could be expanded by following the post over time, widening the level of analysis, or comparing the post with those held by other actors.

An obvious expansion of the research into this topic would be an analysis of the work of future post-holders. An analysis of the young office over time would be fruitful in order to examine the extent to which the office develops from a constrained agent into a fully fledged agent who is able to set their own foreign

policy agenda together with the member states. So far, Catherine Ashton has been the first holder of the High Representative post, which was completely renewed with the Lisbon Treaty. At the end of 2014, her successor will take over the portfolio and try to set his own priorities. Even though this study did not focus on the personality and leadership style of the incumbent, the new incumbent would widen the empirical basis of this investigation, and allow for comparisons. Will the next office-holder be a constrained agent as well, or will he find ways to engage with the member states, and thus secure credibility as a foreign policy player? What mechanisms will the new High Representative use to encourage the member state to widen the discretion? In this regard, the development of a network and informal communication channels with the member state administration can be followed over time.

In this study, the analysis was conducted at the internal EU level. Further research would benefit from incorporating effects from the external (international) level into the study. Within this context, the High Representative can be seen as an actor in a classical two-level game. Future studies could shed light on the possibility of the High Representative exploiting informational advantages of being a diplomatic actor on the ground. Already, the legacy of Catherine Ashton provides interesting cases that need further investigation. While she has often had to struggle with the member states on institutional developments surrounding her office, and on deciding on common priorities and policy lines, she has been able to score successes at the international level. As a negotiator between Serbia and Kosovo, or as the representative of the E3+3 in the Iran Nuclear talk, the High Representative might have had considerable more discretion stemming from the dynamic and closed nature of these negotiations. Crisis diplomacy on the ground with meetings of leaders and representatives of the opposition in Egypt or Ukraine offer a completely different context compared to the negotiation rooms in Brussels. Asymmetrical access to information for the High Representative, and limited possibilities to consult with the member states, might be relevant factors in these cases. Nevertheless, the High Representative might also be subject to external contestation of the post's mandate, and not be accepted as the EU's interlocutor. Effects from the international level were outside the scope of this study, and should be more closely investigated in future research.

A wider level of analysis that goes beyond the scope of the work at hand could include an analysis of external shocks on the PA relationship. International crises, such as those in Ukraine in 2014 or Kosovo at the end of the 1990s, tend to alter the dynamics in the institutional system of the EU. Schmitter (2005) points to the limits of purely functional and EU-internal explanations of integration as "it is doubtful that [functional pressures] would have had such an impact [on European integration] were it not for the generalized perception that Europe as a whole was declining relative to other competing regions of the world" (p. 266). Political crises in EU's neighbourhood, as well as possible negative effects of the 'eurocrisis' on Europe's appeal as a soft power, highlight the added value of common action, and might change the cost-benefit calculation of the member states in favour of granting more discretion to the High Representative in the long run.

Meanwhile, external shocks result mainly in short-term disequilibria in the EU's policy-making machine. First, "[i]n times of internal crises and external shocks the demand for some kind of leadership has always turned to the European Council" (Wessels, 2010: 4). A dominant role of the European Council in absorbing external shocks can have two effects on the High Representative. On the one hand, it might lead to increased agent competition, as the European Council might be inclined to upgrade the profile of the European Council President representing CFSP matters "at his level and in that capacity".³⁴³ While the President does not possess the same authority over the EU's foreign policy instruments as the High Representative, the seniority of the rank means that the two posts may vie for primacy in CFSP matters (Helwig, 2014b). On the other hand, the European Council, as the highest formation of the collective principal, might delegate more tasks to the High Representative and provide legitimacy for related actions. Either way, the European Council-High Representative relations, especially in times of external shocks, remain a crucial aspect of the analysis, and might be a key factor in the future development of the post and its portfolio.

Last but not least, the functioning and organisation of the EU High Representative can be further evaluated by comparing it to other supranational agents with similar

³⁴³ Art. 15(5) TEU.

characteristics. From an internal EU perspective, the President of the European Council is an obvious candidate for comparison. Both offices share certain characteristics, such as their chairing- and representational functions. However, the President post also differs regarding its policy focus, length of mandate, nomination procedures, and missing link to the European Commission. A comparison could reveal what effect these factors have on the discretion of the two posts over their activities. A similar comparison could also be undertaken with the President of the Eurogroup that chairs the finance minister meetings, especially if the post becomes further institutionalised in the future, as proposed by Germany and France.³⁴⁴ The EU-external actors, such as the UN or NATO Secretary-Generals, might offer a good case for comparison; however, they might lack the necessary comparability.

Conclusion

Most of the delegates to the European Convention at the turn of the century certainly had different aspirations when they started their endeavour to improve the functioning of the EU's external relations. First, they had to find a compromise with the other members of the Convention in terms of what set-up was possible, without jeopardising national sovereignty over foreign policy matters. It became clear that a full integration of foreign policy in decision-making, and even administrative terms, was unrealistic in the mid-term. Instead, their compromise foresaw closer connection between the different external policy realms of the EU, and enhanced coordination and representation via the creation of the office of High Representative, supported by an external action service.

When the institutional reforms were finally put into action in end of 2009, they suffered from a 'time wrap'. They were designed during a time of upbeat development of the European foreign policy project, when the CFSP structures consolidated and the defence policy made its first steps. However, they had to be implemented after a series of setbacks. The lost constitutional referenda in France and the Netherlands in 2005 revealed a sober public perception of the EU. At the

³⁴⁴ German Federal Government: "France and Germany – Together for a stronger Europe of Stability and Growth", joint press release. 30 May 2013, available at <http://www.bundesregierung.de/ContentArchiv/EN/Archiv17/Reiseberichte/2013/2013-05-30-merkel-paris.html>.

same time, the enlarged Union displayed significant differences in their foreign policies during crises such as the Iraq intervention in 2003. On top of this, the Lisbon Treaty entered into force in the middle of an economic crisis that caught the attention and resources of member state administrations. Little had been done to prepare the implementation of the institutional structure. The first High Representative started with little more than an office in the Berlaymont building in Brussels, and supporting units were still scattered around the EU district – not the best circumstances for any first incumbent to meet expectations and provide one voice to Europe’s cacophonic foreign policy.

Nevertheless, exactly this moment of institutional creation seemed crucial to analyse and to capture in one of the first academic approaches to the topic after the Lisbon Treaty entered into force. The PA approach was picked as a starting point in order to capture the dynamics and mechanisms surrounding the post in a structured and established framework, and to formulate testable hypotheses under which the post could obtain discretion as an independent foreign policy actor.

The analysis came to an empirical, as well as theoretical, conclusion. The empirical evidence collected here shows that the High Representative had limited discretion as Europe’s foreign policy agent. This limited discretion was conditioned by conflicting preferences of the member states that caused a lack of delegation to the High Representative, as well close control of the member states over the new office. In these early days of the new institutional architecture, the High Representative did not manage to gain additional room of manoeuvre by cooperating with the Commission. Deliberate discretion that would enable the incumbent to set their own priorities and positions was not granted to the High Representative. Only during the complex set-up process of the EEAS did the member states grant unintended discretion to the High Representative.

The theoretical conclusion of the study is that the PA approach is useful for analysing cases in which the agent has limited discretion. However, in order to better understand the absence of discretion and underlying factors and changes, the PA approach has to be adjusted. To that end, it is suggested that the High Representative can be viewed as a case of a ‘constrained agent’, which is characterised by a

contested mandate, sensitivity to *ex-post* sanctions, and weak institutionalisation of cooperation with other agents.

By proposing this special category of constrained agents, new avenues for research open up. Other cases of constrained agents can probably be identified and examined more closely. More importantly for the subject at hand, the framework will allow us to track the development of the High Representative over time in the future. The focus will be to identify factors that either allow the High Representative to develop into a fully-fledged agent, or prevent the post from becoming a foreign policy player with a significant amount of discretion.

Even though the young office of the EU High Representative still has to evolve into an authority in world politics in its own right, the Lisbon Treaty reform is not a failure. It installed the basic framework within which closer cooperation can take place in the future. This close cooperation between the Brussels actors and member state administrations can lead to positive results in the short term, and promote the development of the High Representative into a powerful actor on the world stage in the long run.

Appendix I: Research notes

a) Interview design

The design of the questionnaire was given special consideration. On the one hand, interviews should be designed to be open enough to let salient themes, as well as unknown details, emerge from the encounters. On the other hand, interview questions should be closed and fixed enough to enable the necessary comparability, and to produce robust results (see also Leech, 2002). A one-size-fits-all approach to interviews seems to be impossible, and the methodology has to be adjusted to the study at hand. After all, “it is not possible to formulate a strict guide to good practice for every interview context” (Dunn, 2005: 81). For the context of evaluating the brand new dynamic of the post-Lisbon EU foreign policy architecture, the following design seemed feasible.

A semi-structured in-depth interview seemed to be the most appropriate way of approaching the experts. The questions were constructed based on prior knowledge of the main issues at hand, arising from prior investigation into the research topic (Johnson and Reynolds, 2012). This knowledge was gathered via an assessment of secondary literature, as well as newspaper and Internet sources. Group discussions and brainstorming sessions at the Centre for European Studies in Brussels during the early interview-phase further added justification to the chosen questions.

Interview questions were clustered around three topic areas that seemed salient: the setting up of the EEAS, the immediate response to Libya, and the leadership possibilities of the High Representative. Within this thematic cluster, the interviewer started with a leading question that did not have to be adjusted to the individual interviewee, and allowed the respondent to bring up points most salient to him/her (Johnson and Reynolds, 2012). Leading questions were formulated to be like “grand tour questions” (Leech, 2002: 667), which means that respondents can freely brainstorm on a number of issues of their choice. A open-ended question approach was also necessary, as the interviews took place just after the Lisbon Treaty entered

into force and prior studies on the effect of the Treaty changes were limited (see on this problem also Aberbach and Rockman, 2002).

Often, the answers to the leading questions touched on many issues that belonged to the group of questions that followed: that is, tailored questions. Tailored questions are more detailed and customised to the individual affiliation of the interviewee, and related to the leading question. Often, the questions in this section were “example questions” (Leech, 2002: 667) that prompted the interviewee to be more specific about the cases just mentioned. Ideally, a conversation on the basis of the leading questions developed, but the tailored questions pushed towards further details.

The semi-structured approach proved to have several advantages. First, the interviewees could freely answer the leading questions, which is a clear advantage of open-ended questions (Aberbach and Rockman, 2002). Second, as the leading questions were formulated in a general way, they could be posed to interviewees with different affiliations. The interviews were thus comparable to a certain degree. Third, the tailored questions made it possible to provide the necessary depth to detailed issues of interest. In most cases, a conversation could develop in which the interviewee had the feeling of ownership, while the interviewer could control the course of the interview and gather the necessary details.

Thematic cluster 1:

Setting up of the EEAS

Leading question 1:

What would you describe as the major implications of the changes made to this system from the previous one?

Tailored question 1 (here for a member of the Political and Security Committee):

Does it make a difference to have an institution chairing, instead of a rotating MS?

Tailored question 2: ...

...

Leading question 2: ...

Tailored question 1: ...

...

...

Thematic cluster 2: ...

...

Example of the semi-structured questionnaire

The questionnaire was adjusted over time. Changing the interview questionnaire over the course of a study is controversial, as comparability gets lost (Aberbach and Rockman, 2002); however, for the study at hand, the costs of having less comparability were compensated by the benefits. As mentioned above, the post-Lisbon institutional architecture was widely uncharted and still fluent. A fixed questionnaire in such an environment would have equated to an attempt to ‘nail jelly to a wall’. In-depth preparation was undertaken in order to obtain an appropriate level of knowledge on the publicly known issues before the first round of interviews. Nevertheless, new issues emerged, and these had to be taken up during future interview rounds. In addition, questions had to be incorporated to check whether the statements given by earlier interviewees were correct. Rather than limiting the focus of the study by being straitjacketed within the initial questionnaire, it was thus

possible to explore new issues. As an example, the issue of strategic partnerships proved to be highly salient for many interviewees, and was incorporated as a thematic cluster.

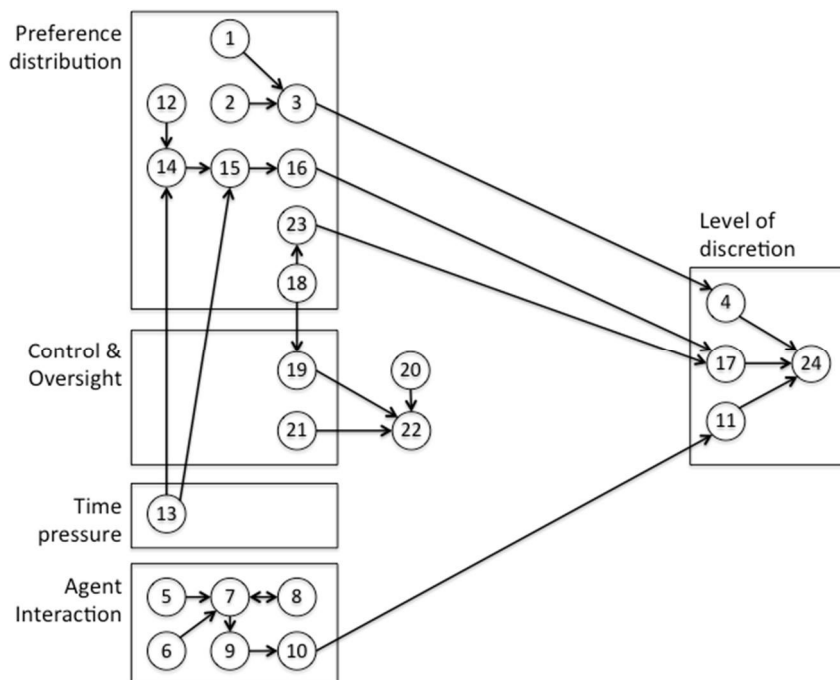
b) List of interviews

#	Date	Affiliations
1	05.05.11	Permanent Representation of a member state to the EU
2	11.05.11	EEAS, Working Group Chair
3	04.05.11	EEAS, Political Affairs Department
4	12.05.11	Permanent Representation of a member state to the EU
5	27.05.11	EEAS, Political Affairs Department
6	30.05.11	Ambassador, Permanent Representation of a member state to the EU
7	07.06.11	EEAS, Working Group Chair
8	08.06.11	Permanent Representation of a member state to the EU
9	09.06.11	Ambassador, Permanent Representation of a member state to the EU
10	10.06.11	EEAS, Development Cooperation Coordination
11	14.06.11	EEAS, Managing Director
12	14.06.11	European Parliament, Coordinator Committee on foreign affairs
13	16.06.11	Commission, Secretariat-General
14	17.06.11	EEAS, Head of Unit
15	22.06.11	European Parliament, Coordinator Committee on foreign affairs
16	27.06.11	European Parliament, Secretariat-General
17	28.06.11	Commission, Development Cooperation
18	07.07.11	EEAS, Corporate Board
19	07.07.11	EEAS, Foreign Policy Instrument Service
20	12.07.11	Commission, Enlargement
21	13.07.11	EEAS, Managing-Director
22	14.07.11	EEAS, Deputy Working Group chair
23	14.07.11	European Parliament, Advisor to Political group
24	14.07.11	European Parliament, Coordinator Committee on foreign affairs
25	18.07.11	European Parliament, Secretariat-General
26	18.07.11	Commission, Development Cooperation
27	27.07.11	Commission, Development Cooperation
28	27.07.11	EEAS, Head of Unit
29	28.07.11	Commission, Trade
30	01.08.11	Commission Enlargement
31	02.08.11	High Representative Cabinet
32	02.08.11	Commission, Trade
33	05.08.11	Commission, Humanitarian aid
34	08.08.11	Commission, Humanitarian aid
35	31.08.11	European Council President Cabinet
36	15.08.11	Ambassador, Permanent Representation of a member state to the EU

37	20.09.11	Ambassador, Permanent Representation of a member state to the EU
38	28.09.11	European Parliament, member of Committee on foreign affairs
39	20.03.12	Foreign ministry of a member state
40	27.03.12	Member of the Convention on the future of Europe
41	08.05.12	EEAS
42	08.05.12	EEAS, Political Affairs Department
43	02.07.12	Foreign ministry of a member state
44	11.07.12	Foreign ministry of a member state
45	25.10.12	Foreign ministry of a member state
46	08.07.13	EEAS, Corporate Board
47	09.07.13	EEAS, Political Affairs Department
48	09.07.13	Commission, Secretariat-General
49	11.07.13	Council, Secretariat-General
50	12.07.13	Council, Secretariat-General
51	02.08.13	Foreign ministry of a member state
52	30.09.13	Foreign ministry of a member state

c) Process-tracing example

Process-tracing – the High Representative and crisis response to Libya



- (1) No contradictory positions on calling on, and end of use of, force in Libya among member states
- (2) No contradictory positions that the Gaddafi regime lost legitimacy among member states (despite media reports suggesting Berlusconi–Gaddafi ties)
- (3) Coordination and formulation of statements via COREU network and PSC

- (4) High Representative issues agreed statements
- (5) DG ECHO in Commission follows different policy objective (immediate, apolitical relief for people on the ground)
- (6) DG ECHO has own, autonomous, crisis-management structures
- (7) DG ECHO rejects being coordinated by the High Representative EEAS
- (8) EEAS chairs coordination meeting (Crisis Platform)
- (9) DG ECHO sees Crisis Platform only as a venue for information exchange
- (10) No substantial cooperation between High Representative and Commission
- (11) No discretion for the High Representative over EU humanitarian aid instruments
- (12) Contradictory preferences on installing a no-fly zone over Libya among the member states
- (13) Time pressure stemming from the development of the situation on the ground
- (14) PSC fails to overcome differences at the ambassador level
- (15) European Council is called in on French initiative
- (16) Heads of state or government agree on conditions for military engagement
- (17) Decision-making shifted to heads of state or government
- (18) Member states do not agree on recognition of the Libyan opposition at minister/ambassador level
- (19) No mandate for the High Representative to recognise the Libyan opposition
- (20) High Representative offered an informal meeting with the Libyan opposition group at the EP in Strasbourg
- (21) High Representative anticipates disapproval of member states if steps towards recognising the opposition are taken
- (22) High Representative plays down informal meeting with the Libyan opposition
- (23) European Council recognises Libyan National Transitional Council as political interlocutor
- (24) No discretion for the High Representative as a crisis manager

d) List of peer debriefings/research presentations

PhD-related presentations during the research period.

- 22 Oct 2010: EXACT Initial Conference, Cologne
- 14 Jan 2011: Workshop: Legal Dimensions of the EU's External Relations, University of Twente, Enschede
- 18 Jan 2011: Workshop: CFSP One Year after the Lisbon Treaty, Institute für Europäische Politik, Berlin
- 02 Feb 2011: Oberseminar, University of Cologne
- 13 April 2011: In-house seminar, Centre for European Policy Studies
- 30 June 2011: UACES Student Forum, Guildford
- 07 Sept 2011: EXACT PhD workshop, Finnish Institute of International Affairs, Helsinki
- 04 Oct 2011: EXACT midterm assessment, Brussels
- 15 Dec 2011: 7th Annual Graduate Conference in Political Science, International Relations and Public Policy, Jerusalem
- 08 Feb 2012: FIIA in-house research roundtable, Helsinki
- 05 Mai 2012: EU in International Affairs Conference, Brussels
- 20 June 2012: BISA Conference, Edinburgh
- 26 June 2012: EXACT Intervision Workshop, Brussels
- 29 Oct 2012: Theory & Practice seminar, University of Edinburgh

04 Sept 2012: UACES General Conference, Passau
18 Sept 2012: EXACT Network Seminar on Academic Skill, Cologne
24 Nov 2012: EXACT PhD progress workshop, Dublin
04 Feb 2013: Theory & Practice seminar, University of Edinburgh
11 Feb 2013: Report Presentation, Centre for European Policy Studies, Brussels
18 April 2013: EXACT PhD Intervision Workshop, Edinburgh
23 April 2013: PhD showcase event, University of Edinburgh
14 June 2013: EXACT PhD Intervision Workshop, Cagliari
08 July 2013: Presentation at EXACT Final Conference, Brussels
17 July 2013: Oberseminar, University of Cologne

Appendix II: Member states' positions in the European Convention

Austria:	The Austrian representative explicitly stated that a full merger of the post of High Representative and Commissioner for external relations under the roof of the Commission would be the most desirable solution to achieve an effective EU foreign policy. However, Austria was willing to compromise and to opt for a gradual solution. "[A full merger] would be the best way to ensure the consistency of the Union's external activities as a whole in the context of its external relations, security, economic and development policies. But we know that this option is not acceptable to all member states at the present time and can only be realised step-by-step in a long-term perspective" (WD 36). At an early point the foreign minister, Benita Ferrero-Waldner, said in a speech: "Austria and other smaller member states of the European Union want to delegate foreign, security and defence policy matters to the joint responsibility of the Union" (Ferrero-Waldner, 2001). Austria was in favour of extending QMV to the CFSP (WD 36; EUCON, 2003) and right of initiative to the High Representative, with no consent from Commission College needed (WD 060). The High Representative should chair Council meetings concerning foreign affairs (WD 060).
Belgium	Belgium, in favour of a balanced institutional framework, argued for having the High Representative integrated into the Commission, while leaving links to the European Council: "Je suis partisan d'une voie médiane, que je qualifierais de ligne 'réaliste' conduisant au renforcement du Haut Représentant et à son intégration dans la Commission, moyennant un lien avec le Conseil européen" (WD 4). The Prime Minister argued that a merger of the two posts would be inevitable (Verhofstadt, 2001). "Even before the Constitutional Treaty enters into force, the High Representative should be able to participate in the meetings of the Commission. The analysis and policy planning unit, which is already at his disposal, should be reinforced during this period and become a common service for him and the Commission" (Benelux, 2002). Belgium was in favour of extending QMV to the CFSP (EUCON, 2003; Scholl, 2003), and a right of initiative to the High Representative (Benelux, 2002), as well a permanent chair for the Foreign Affairs Council (Benelux, 2002).
Britain	On several occasions during the Convention, British government representative Hain argued against any combination of the two posts. Synergies and coordination between the two posts should be enhanced, and the High Representative should be allowed to take part at Commission College meetings when foreign policy questions are discussed (CONV

	591/03). The UK opposed the extension of QMV (EUCON, 2003). The British representative argued for better use of existing QMV rules, and stated that QMV would heighten awareness of EU-internal disagreement (WD 40). It was suggested that a right of initiative and the chair of the Foreign Affairs Council would strengthen the High Representative (CONV 591/03).
Denmark	Prime minister Rasmussen argued for an intergovernmental foreign and security policy: “The point of departure must be that the foreign, security and defence policies of the EU continue to be based on co-operation among the member states, so-called intergovernmental cooperation, firmly anchored in the Council” (Rasmussen, 2003a). This also included that the High Representative should stay in the Council structures: “As foreign policy will remain a primarily intergovernmental matter, I think it only logical that the EU foreign policy representative should be anchored in the Council” (Rasmussen, 2003b). While stressing the intergovernmental character of the Common Foreign and Security Policy (Rasmussen, 2003a), “there should be an extended opportunity for qualified majority voting” (EUCON, 2003; Stig Moller, 2003) (see also EUCON, 2003). Denmark was in favour of extending QMV to the CFSP (Stig Moller, 2003). Its position on the chair of the Foreign Affairs Council was more ambiguous, Denmark was first to speak against giving the chairmanship to the High Representative, but later supported the idea (EUCON, 2003; Stig Moller, 2003).
Finland	The Finnish representative in the European Convention made a strong point for a High Representative in the Commission: “The only rational solution to the problem is to make the Commission – that already successfully represents the EU in a remarkable part of its external relations – the representative for the entire external policy (except defence)” (WD 9). In a report by the Finnish government to the parliament after the Convention, the Finnish position was again pronounced: “The ‘double hatting’ principle of combining the duties of the High Representative and the Commissioner for External Relations is acceptable to Finland as a transitional measure and as part of a balanced overall institutional concept. In the long term, the objective should be to merge the posts of the High Representative and the Commissioner for External Relations and to place the new post in the Commission” (Finnish Ministerial Committee for EU-Affairs, 2003). Furthermore, Finland advocated the extension of QMV to the CFSP (Finnish Ministerial Committee for EU-Affairs, 2003; Scholl, 2003). “The right of initiative should be defined so that it does not encroach upon the right of initiative of the Commission” (Finnish Ministerial Committee for EU-Affairs, 2003). Whoever holds the post of High Representative should not be appointed President of the External Relations Council (EUCON, 2003; Finnish Ministerial Committee for EU-Affairs, 2003).
France	Unlike the UK, France never actively argued against the integration into the Commission, however it took a sceptical position towards a <i>full</i> integration (Interview #40). The French government put forward the idea of having the

	<p>High Representative work under the direct authority of the President of the European Council (WD52). French President Chirac and German Chancellor Schroeder settled a deal on the new institutional architecture, which gave the idea of the double-hatted High Representative the final blessing. This Franco-German proposal (CONV 489/03) also advocated qualified majority decisions in the CFSP, even though France did not promote this change in the past (EUCON, 2003). As part of the Franco-German deal, the French also agreed on a right of initiative and a permanent Council chair for the High Representative (CONV 489/03).</p>
Germany	<p>In a speech to the French Assemblée Nationale in 2001, German foreign minister Fischer spoke about the possibility to overcome the dualism in foreign policy between the Council and the Commission by merging the posts (Fischer, 2001b). The German representative in the Convention, Glotz, also supported a full integration of the CFSP in the long run (Crum, 2002). During the course of the Convention, Germany introduced the model of the double-hatted High Representative and supported QMV, a right of initiative for the High Representative, as well as a permanent Foreign Affairs Council chair (CONV 489/03).</p>
Greece	<p>In a keynote speech by the Greek Prime minister, he argued for a federal model for the final transformation of the EU: “Faced with the prospect of a federation and with enlargement, we need more effective executive and governmental institutions. The European Commission can progressively undertake this role; it can evolve, that is, into a government institution for the effective management of the single currency as well as the common foreign policy (CFSP) in a visible, coherent and transparent manner while at the same time retaining its right of legislative initiative” (Simitis, 2001). Even before the Constitutional Treaty enters into force, the High Representative should be able to participate in the meetings of the Commission. The analysis and policy planning unit should be reinforced during this period, and become a common service for him and the Commission. During the plenary of the European Convention, this pro-integrationist stance was also repeated by the Greek government representative, who argued for a merger of the two posts (Katiforis, 2002). The government was in favour of an extension of CFSP, but stressed the need for a veto option (EUCON, 2003; Scholl, 2003).</p>
Ireland	<p>Ireland, with an electorate that had just dismissed the Nice Treaty in a referendum, stressed in a government position especially the need for accountability of EU foreign policy. A merger of the pillars into the first pillar, and under the responsibility of the Commission, would be favourable: “It is easier for national parliaments to follow negotiations in pillar one than in pillar three because of the transparency requirements imposed on the Commission” (Bruton, 2002). While a small state like Ireland was in favour of such a move, it realised that the bigger states might be opposed to it: “While such a move would give smaller member states greater protection from the consequences of unilateral foreign policy initiatives of their bigger</p>

	<p>neighbours, the bigger states are unlikely to agree to such constraint on their traditional freedom of action in foreign and defence policy” (Bruton, 2002). During the course of the Convention, Ireland welcomed the idea of a double hat that would also have a base in the Commission (Cowen, 2003b). Practical issues that needed to be addressed included the question of deputies of the High Representative (Cowen, 2003a). In terms of the qualified majority decision: “There are possibilities available in the existing Treaties – including constructive abstention, enhanced co-operation, and limited QMV in implementing decisions – which have not been fully utilised up to now. There are those who argue that we should now move to wider use of majority voting. If this is to be contemplated, I think that we will have to look at the safeguards needed. It will also be necessary to respect the special position of security and defence matters.” (Cowen, 2003b). On the right of initiative for the High Representative: “The High Representative should have the right of initiative alongside the member states. Where appropriate, he or she should be able to table a proposal jointly with the Commissioner for External Relations” (WD 16). Like Finland, Ireland was sceptical about the chairing of the External Relations Council (WD 16).</p>
Italy	<p>One of Italy’s aims in the European Convention was to preserve the balance between the different institutions. That being said, the Italian delegates had a rather communitarian vision of the EU project (Croci, 2002). In view of the Italy’s upcoming Presidency, in which Italy chaired the IGC, Italy, however, did not articulate a strong position (EUCON, 2003). “Gianfranco Fini [the Italian representative at the Convention] advocated the introduction of qualified majority voting under the condition that each Member state would be free to opt out of any decision it could not support” (Crum, 2002). Italy was in favour of giving the High Representative the chair of the Foreign Affairs Council (EUCON, 2003).</p>
Luxembourg	<p>“In the medium to long term, the common foreign and security policy must be pooled, in the true sense of the word. The Commission must be allowed to propose, which means that the High Representative for Foreign Policy (who does an excellent job – my comments do not refer in any way to the current holder of the office) must be integrated into the Commission, which will have the right of initiative in the area of the common foreign and security policy.” (Juncker, 2001). “Even before the Constitutional Treaty enters into force, the High Representative should be able to participate in the meetings of the Commission. The analysis and policy planning unit, which is already at his disposal, should be reinforced during this period and become a common service for him and the Commission” (Benelux, 2002). In general, there was a strong consensus in the national debate to strengthen the Community method and integrate the Common Foreign and Security Policy (Bossaert, 2003). The extension of QMV, especially in combination with initiatives by the High Representative, were welcomed (Scholl, 2003). The High Representative should have a right of initiative and chair the Foreign</p>

	Affairs Council (Benelux, 2002).
Netherlands	<p>The Netherlands was in favour of overall strengthening of the community method and stabilising the institutional balance of the Union (de Vries et al., 2002). However, the introduction of community elements in the area of CFSP was only advocated cautiously. A merger of the High Representative and the Relax Commissioner was formulated as a long-term objective (Dutch Foreign Ministry, 2002). An organisationally integrated foreign policy was seen as something to aim for; however, during the proceedings of the European Convention the Netherlands also supported having the High Representative under the authority of the European Council (Pijpers and Terhorst, 2003). “Even before the Constitutional Treaty enters into force, the High Representative should be able to participate in the meetings of the Commission. The analysis and policy planning unit, which is already at his disposal, should be reinforced during this period and become a common service for him and the Commission” (Benelux, 2002). A right of initiative was supported, in particular joint proposals by the Commission and the new European Minister of Foreign Affairs, and in the case of CFSP-related sanctions and/or decisions that have purely financial consequences, and neither operative nor military consequences (WD 47; EUCON, 2003). Together with the other Benelux countries, they supported the right of initiative and the permanent chair of the Foreign Affairs Council (Benelux, 2002).</p>
Portugal	<p>Portugal did not display a strong position with regard to the organisation question about the post of High Representative. It was argued at the time that Portugal’s main concern in general was to keep the institutional balance and level of sovereignty the same even after the Union enlargement (De Moraes Vaz, 2002). The Portuguese government representative mentioned its concern regarding a merger of the two posts as follows: “different views on the possible merger of both functions should be further evaluated on their full implications, both at competencies and institutional levels.” On the other hand, the creation of possible synergies, while keeping the posts separate, should be further considered (WD 034). However, an earlier speech by the foreign minister mentioned the aim of consequently merging all three pillars: “three existing pillars must be merged into one, gradually bringing joint foreign and security policy and the area of liberty, security and justice within the Community’s remit” (Guterres, 2001). This included placing the post in the Commission (EUCON, 2003). Portugal argued for a better use of the already existing possibilities for QMV (WD 34; EUCON, 2003).</p>
Spain	<p>Spain (together with the UK) published a paper arguing for rather a strengthened post of High Representative, while ignoring the double-hatted idea of France and Germany. Aznar did not see institutional adjustments as a necessary condition: “From that perspective, we must first of all develop the contents of the Foreign and Defence Policy and the Area of Freedom, Security and Justice, without upsetting the work in progress or the balance</p>

	<p>between the Community institutions” (Aznar, 2001). Spain did not support an extension of QMV in the field of CFSP (EUCON, 2003). The Spanish foreign minister represented in the European Convention was sceptical about applying the community method to non-legislative policy fields (Crum, 2002). Together with the UK, Spain wanted to strengthen the post of High Representative by granting the right of initiative and the chair of the Foreign Affairs Council (CONV 591/03).</p>
Sweden	<p>Sweden voiced concerns about the combination of the two functions (High Representative and external relations Commissioner), and pledged for a clear division of competences. The separation of the posts has the advantage “of maintaining and even clarifying the distinct roles and responsibilities of the Council and the Commission as provided by the treaties, and of avoiding confusing the roles and complicating co-ordination” (WD 042). Sweden agreed to the possibility of using QMV in the field of CFSP, but only if strategies and priorities on which these decisions rest were agreed on beforehand. Opt-out possibilities should exist as well (EUCON, 2003). The intergovernmental character of CFSP has to be preserved and a passarel clause should not be introduced (WD 68). Sweden did not support a right of initiative in the hands of the High Representative. The right of initiative in areas of CFSP should stay with the Commission (Hjelm-Wallen, 2003). Joint initiatives of the High Representative and the Commissioner for External Relations should be possible (WD 068). Sweden argued for more continuity of the work program, but rather preferred the solution of team presidencies with joint working programs. A dedicated Foreign Affairs Council should be headed by the foreign minister of the rotating Presidency (EUCON, 2003; Persson, 2002).</p>

Documents

Number	Title	Date
WD 11 (WG III)	Comments by Dr Gunter PLEUGER on the preliminary draft report submitted by the Chairman at the meeting of 18 July 2002 (SN 03130/02)	05.07.2002
WD 11 (WG VII)	“Promoting the community method in the external actions of the EU” – Paper by Mr Adrian Severin, alternate member of the Convention	28.10.2002
WD 16 (WG VII)	“Improving the efficiency and effectiveness of the CFSP” – Paper by Mr Bobby McDonagh, alternate member of the Convention	05.11.2002
WD 17 (WG VII)	“Double hat” – Paper by Mr Gunter Pleuger, alternate member of the Convention	05.11.2002
WD 18 (WG VII)	“External representation of the EU” – Paper by Ms Danuta Hübner, member of the Convention	07.11.2002
WD 19 (WG VII)	“Towards a more effective EU in international relations” – Paper by Ms Teija Tiilikainen, member of the Convention	08.11.2002
WD 2 (WG VII)	Copy of a letter sent by Mr Elmar Brok, member of the Convention, to the President of Working Group VII, Mr Jean-Luc Dehaene	24.09.2002
WD 21 REV 1 (WG VII)	Revised draft final report	22.11.2002
WD 34 (WG VII)	Comments by Mr Ernâni R. Lopes on the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII)	19.11.2002
WD 36 (WG VII)	Comments by Mr Gerhard Tusek to the preliminary draft final report of Working Group VII on External Action	19.11.2002
WD 40 (WG VII)	Comments by Mr Peter Hain on the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII) and the draft text on principles and objectives of EU external action (WD 007 - WG VII)	19.11.2002
WD 42	Comments by Ms Lena Hjelm-Wallén on the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII) and to the draft text on principles and objectives of EU external action (WD 007 - WG VII)	19.11.2002
WD 47 (WG II)	Comments by Mr Gijs de Vries on the preliminary draft final report of Working Group VII on External Action	21.11.2002

	(WD 021 - WG VII) and the draft text on principles and objectives of EU external action (WD 007 - WG VII)	
WD 52 (WG VII)	Comments by Mr Dominique de Villepin on the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII) and the draft text on principles and objectives of EU external action (WD 007 - WG VII)	22.11.2002
WD 54 (WG VII)	Comments by Mr Bobby McDonagh on the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII)	25.11.2002
WD 61 (WG VII)	Comments by Ms Teija Tiilikainen on the revised draft final report of Working Group VII on External Action (WG VII – WD 21 REV 3)	12.12.2002
WD 66 (WG VII)	Comments by Mr Peter Hain on the revised draft final report of Working Group VII on External Action (WG VII – WD 21 REV 3)	12.12.2002
WD 68 (WG VII)	Comments by Ms Lena Hjelm-Wallén on the revised draft final report of Working Group VII on External Action (WG VII – WD 21 REV 3)	12.12.2002
WD 4 (WG VII)	Intervention de M. Louis Michel, membre de la Convention, lors de la réunion du groupe, le 24 septembre 2002	24.09.2002
WD 8 (WG VII)	Address of the Secretary-General/High Representative Mr Javier Solana at the meeting of WG VII on 15 October 2002	15.10.2002
WD 9 (WG VII)	Address of Mr Poul Nielsen, member of the European Commission, at the meeting of WG VII on 15 October 2002	15.10.2002
WD 60 (WG VII)	Comments by Mr Gerhard Tusek on the revised draft final report of Working Group VII on External Action (WG VII – WD 21 REV 3)	11.12.2002
WD 47 (WG VII)	Comments by Mr Gijs de Vries on the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII) and to the draft text on principles and objectives of EU external action (WD 007 - WG VII)	21.11.2002
WD 34 (WG VII)	Comments by Mr Ernâni R. Lopes on the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII)	19.11.2002
WD 42 (WG VII)	Comments by Ms Lena Hjelm-Wallén on the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII) and the draft text on principles and objectives of EU external action (WD 007 - WG VII)	19.11.2002

CONV 200/02	Summary Report of the Plenary Session – Brussels, 11 and 12 July 2002	16.07.2002
CONV 252/02	Mandate of Working Group VII on External Action	10.09.2002
CONV 307/02	Summary of the meeting held on 24–25 September 2002	01.10.2002
CONV 342/02	Summary of the meeting held on 8 October 2002	11.10.2003
CONV 459/02	Final report of Working Group VII on External Action	16.12.2002
CONV 489/03	Contribution submitted by Mr Dominique de Villepin and Mr Joschka Fischer, members of the Convention	16.01.2003
CONV 591/03	Contribution by Ana Palacio and Peter Hain, members of the Convention: "The Union institutions"	28.02.2003
CIG 45/03	IGC 2003 – Union Minister for Foreign Affairs	10.11.2003
CIG 2/03	IGC 2003 – The Union Minister for Foreign Affairs: main points	02.10.2003
CIG 6/03	IGC 2003 – Preparation of the IGC ministerial meeting on 14 October 2003: questionnaires	07.10.2003

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